

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-4208

United States Court of Appeals

For the Second Circuit.

HENDERSON TRUMBULL SUPPLY CORPORATION,
Petitioner.

vs.

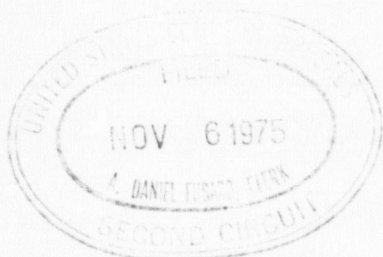
THE NATIONAL LABOR RELATIONS BOARD,
REGION 2,
Respondent.

PETITION FROM THE NATIONAL LABOR RELATIONS BOARD.

APPENDIX TO BRIEF FOR PETITIONER.

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SUPPLEMENTAL DECISION AND ORDER. MJP

220 NLRB No. 42

D--395
Trumbull, Conn.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HENDERSON TRUMBULL SUPPLY
CORPORATION

and

Cases 2--CA--12796 and
2--RC--15878

TEAMSTERS LOCAL 191,
AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

SUPPLEMENTAL DECISION AND ORDER

On August 6, 1973, the National Labor Relations Board issued its Decision and Order ^{1/} in the above-entitled proceeding, finding that Respondent has engaged in and was engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act and ordering that it cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and honor and abide by any collective-bargaining agreement executed by the Union and Respondent.

On July 23, 1974, the United States Court of Appeals for the Second Circuit set aside the Board's Order and remanded the proceeding to the Board for further consideration of the entire matter with the instruction that Respondent be given a hearing on certain of its objections to the election. ^{2/}

^{1/} 205 NLRB 245.

^{2/} 501 F.2d 1224 (C.A. 2, 1974).

SUPPLEMENTAL DECISION AND ORDER

Pursuant to the aforesaid order of remand, a hearing was held before an Administrative Law Judge where all parties appeared and were afforded full opportunity to present evidence, and to examine and cross-examine witnesses.

On March 26, 1975, Administrative Law Judge Morton D. Friedman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommendations. ^{3/}

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Henderson

^{3/} In adopting the Administrative Law Judge's Decision on Remand, we do so because we accept the court's opinion as the law of this case and particularly as to the consideration of subjective reactions of employees to the statements in issue. The Administrative Law Judge has considered the factors set forth by the court in its remand as being determinative and has made his findings based substantially on credibility resolutions which are supported by the record.

SUPPLEMENTAL DECISION AND ORDER

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Trumbull Supply Corporation, Trumbull, Connecticut, its officers, agents, successors, and assigns shall take the action in the said recommended Order as set forth in our prior Decision and Order, 205 NLRB 245.

Dated, Washington, D.C. SEP 11 1975

Betty Southard Murphy, Chairman

Howard Jenkins, Jr., Member

John A. Penello, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE.

JD-140-75
Trumbull and Bridgeport,
Conn.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

HENDERSON TRUMBULL
SUPPLY CORPORATION

and

Cases Nos. 2-CA-12796
2-RC-15878

TEAMSTERS LOCAL 191 a/w
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS
OF AMERICA

Alexander O. Rosenberg, Esq.,
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Dwight F. Fanton, Esq.,
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(Hallam, Conley, Bralley &
Reeves), of Bridgeport, Conn.,
for the Respondent-Employer.
Norman Zolot, Esq., of
Hamden, Conn., for the
Charging Party-Petitioner.

DECISION ON REMAND

Statement of the Case

MORTON D. FRIEDMAN, Administrative Law Judge: Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted by the Regional Director for Region 2 of the National Labor Relations Board on June 14, 1972 in Case No. 2-RC-15878 among the employees of the Respondent in an appropriate unit. At the conclusion of this election, the parties were furnished with a tally of ballots which

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

showed that of approximately 15 eligible voters, 13 cast ballots of which 7 were for, and 6 against, the Union. None was challenged. Thereafter, the Respondent-Employer filed timely Objections to Conduct Affecting the Results of the Election. Pursuant to these objections, the Acting Regional Director for Region 2 of the Board conducted an investigation and on August 1, 1972, issued a Report on Objections recommending that the Board overrule such objections and issue a certification of representatives. August 14, 1972, the Respondent-Employer filed timely exceptions to the aforesaid report requesting that the Board reject the Report on Objections and that said election held on June 14, 1972, be set aside and a new election be conducted or, in the alternative, that the Board direct a post-election hearing for the purpose of taking evidence to determine substantial and material issues of fact involved and resolve certain inconsistent and unclear statements and evidence referred to in said Report on Objections. On October 31, 1972, the Board issued its decision overruling the Employer's exceptions and certifying the Union as the exclusive representative of the employees for the purposes of collective bargaining.

Thereafter, upon a charge filed by the Union on November 15, 1972, the aforesaid Regional Director issued his Complaint in the instant proceeding dated December 14, 1972, against the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act. The said Complaint alleges, in substance, that despite the Board's certification of the Union as the collective-bargaining representative of the Respondent's employees in the appropriate unit, the Respondent had refused and continued to refuse to bargain with the Union despite the Union's request for bargaining. The Respondent's Answer to the foregoing Complaint denied in part and admitted in part the allegations in the Complaint. On February 22, 1973, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Accordingly, the entire matter was ordered transferred to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted was served upon the Respondent. Respondent thereafter filed a response to the said Notice to Show Cause.

In substance, the Respondent's Answer to the Complaint and the response to the Notice to Show Cause allege that the Union had not been legally or properly designated or selected by the Respondent's employees and that the Certificate theretofore issued by the Regional Director was invalid because, in essence, the Objections to Conduct Affecting the Result of the Election filed by the Respondent in the representation case had merit, and that, among other things, the Respondent was entitled to a hearing on the said objections.

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

Thereafter, on August 6, 1973, the Board issued its Decision upon the Complaint, Answer, Notice to Show Cause and response thereto 1/ and ordered that the Respondent bargain in good faith with the Union.

5 Thereafter, the Respondent filed with the United States Court of Appeals for the Second Circuit a Petition For Review of the Board's Order, requesting that the Order be set aside. The General Counsel filed an Answer and Cross Petition to enforce the Board's Order to Bargain. On July 23, 1974, the Court of Appeals handed down its
10 Opinion and Order setting aside the Board's Order and remanding the case to the Board for further proceeding with the instruction that the Respondent be given a hearing on the Objections to the Election held in the representation proceeding. 2/

15 Pursuant to the aforesaid Order of Remand, the Board, on November 5, 1974, issued its Order reopening the proceeding and remanding it to the Regional Director for Region 2 for a full hearing on the Objections before a Trial Examiner and for such further proceedings as are appropriate in conformity with the Court's remand. Thereafter,
20 pursuant to the Board's Order of Remand, the Regional Director for Region 2 on November 13, 1974, issued his Order Reopening and Consolidating Cases Nos. 2-RC-15878 and 2-CA-12796 and issued a Notice of Hearing to be conducted before an Administrative Law Judge at which time the parties would have a right to appear in person and give testimony in
25 accordance with the Order of the Board.

 Pursuant to the aforesaid Order of Reopening, Consolidating and the Notice of Hearing, a hearing was held before the undersigned at New York, New York, on January 15, 1975, in which all parties
30 appeared and were afforded full opportunity to present evidence on the subject matter of the remand, examine and cross-examine witnesses, present oral argument and file briefs. Short oral argument was made by the Respondent and the Charging Party. A brief was thereafter timely filed by the Respondent.

35 Upon the entire record in this case, including the Court's Opinion and Order, the Board's Decision and Order and subsequent Order Reopening the Record, and the record in both cases, the evidence adduced at the hearing before the undersigned, the brief submitted by the
40 Respondent, and the oral argument made at the hearing, and upon my observation of each of the witnesses as they appeared before me, I make the following:

45 1/ 205 NLRB No. 8.

2/ Henderson Trumbull Supply Corporation v. N.L.R.B., 501 F.2d 1224, 86 LRRM 3121.

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

Findings of Fact and Conclusions of Law

I. The Issues Involved

5 As noted above, the remand ordered by the Court of Appeals involves the merits of the Respondent's Objections to the Conduct Affecting the Results of the Election conducted by the Board on June 14, 1972. The objections relate to the contents of an alleged statement made by Anthony Rossetti, the union business agent, at a meeting held with some of the Respondent's employees who later voted in the election, which meeting was held on the night of June 12, 1972. At that meeting, Rossetti, in response to a general inquiry as to how much money and what fringe benefits the employees would receive if the Union prevailed in the election, allegedly stated that the Company made over one million dollars, and, according to two witnesses, Rossetti allegedly specifically mentioned "1.2" or "1.3" million during the year 1971.

20 According to the Respondent, Rossetti's statement that the Respondent "made 1.3 million," meant to the employees that the word "made" was the equivalent of "profit." Respondent further contends that the evidence shows that there is a significant enough disparity between the alleged 1.3 million and the actual profits made by the Respondent to constitute a material misrepresentation of fact. The Respondent also contends that the employees could have believed that Rossetti made the statement from his own knowledge of the facts instead of believing that he was merely expressing an offhand opinion in the nature of campaign propaganda. The Respondent further maintains that the employees were not competent to appraise the business agent's alleged misrepresentation from their own personal knowledge of the Employer's profit from its operation. Finally, the Respondent contends that the Employer did not have an adequate opportunity to reply to the Union's statement inasmuch as the statement was made on the night of June 12, 1972, after business hours at the union hall; the Respondent's vice president, Fred Salvati, was the first member of Respondent's management to learn of the alleged statement and this knowledge was acquired by Salvati on June 15, 1972, the day after the election.

40 The Union, on the other hand, contends that the disparity, if any, between any statement made by its business agent, Rossetti, and the actual profit made by the Respondent is not great enough to be material. Moreover, although the counsel for the General Counsel did not argue or submit brief, nevertheless it is assumed that along with the Union, counsel for the General Counsel would also contend that the impact of the statement made by Rossetti was so negligible as to be de minimis and that, therefore, any statement made by Rossetti at the meeting of June 12 was insufficient in impact to have affected the results of the election.

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

II. The Testimony at the Hearing

The first witness to testify for the Respondent was Fred Salvati, vice president of the Respondent. Salvati testified that on Thursday, June 15, an employee, Joe Ballester, told Salvati words to the effect, "I guess you heard what the Union told our boys as far as the amount of money our company made." Ballester had not attended the meeting at which the alleged statement was made. Salvati, not knowing what was said at the meeting, approached employee Gerald Cataldo, a truckdriver, the following night, June 16, when Cataldo came back from a delivery. Cataldo had attended the meeting at which the alleged remarks were made and Salvati asked if Cataldo heard a comment about how much money the Respondent made. Cataldo, according to Salvati, then told the latter that Rossetti, the union's business agent, told the eight assembled employees at the meeting that the Respondent "made 1.3 million." According to Salvati he then asked whether the statement was 1.3 million in sales or profit. Cataldo answered that it was in profit. Salvati then being astounded by the figure asked Cataldo if the latter realized how much business the Respondent would have to do in order to realize 1.3 million in profits. According to Salvati, Cataldo merely shrugged and said that the men were also told at the same time that that was how Salvati got his new big house, because the Respondent was making a lot of money. The following Monday, Salvati took Cataldo to Respondent's counsel's office where Cataldo told Respondent's counsel that Rossetti made the statement that the Company made 1.3 million dollars and that Salvati's home was worth \$75,000 or \$80,000. Respondent's counsel then asked Cataldo what effect the statements had on the men. Cataldo told Respondent's counsel that the men thought they had been "shafted." Thereafter, according to Salvati at a later date, similar information was obtained by Salvati from Steve Atkins and Peter Garrick.

On cross-examination, however, upon being confronted with the affidavit which he signed and swore to before the Board's investigator during the investigation of the originally filed Objections to the Election, Salvati ultimately stated that it was not Cataldo who stated that the money for his new house was taken from the profits of the business but that it was Salvati, himself, who "believed" that it was indicated by the union business agent that the house was paid for by money Salvati was taking from the Company. Although Salvati then testified that Cataldo stated that the house was built from profits not on the night that Salvati first questioned him but at the Respondent's counsel's office on the following Monday, however, Salvati admitted that he did not tell this to the Board's investigator and it is not contained in Salvati's affidavit.

Additionally, in his direct testimony regarding his conversation with employee Steve Atkins, Salvati testified that he asked Atkins if the latter realized how much business the Company would have to do in order to realize 1.3 million in profits and that he told Atkins that the latter

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was a college student and should realize that this was impossible. However, again, when confronted with the investigatory affidavit which he made very shortly after the event, Salvati had to admit that the same was not contained in the affidavit and he had not told this to the Board's investigator. There were further inconsistencies between Salvati's testimony on the stand and the investigatory affidavit above referred to. Although it is possibly arguable that over 3 years have elapsed since the events originally occurred, nevertheless, where Salvati's testimony on direct examination differs from the investigatory affidavit or where his said direct testimony contains matter not contained in the said affidavit, I do not credit the matter to which he testified which was not contained in the said affidavit. This is so because I have grave doubts as to the reliability of Salvati's statement on the witness stand that his recollection as to the events which occurred close to 3 years ago was sharper on the day he testified than it was at the time he gave the affidavit to the Board's investigator only days after the alleged events occurred.

The second witness produced by the Respondent was Frank Cataldo. As noted above, he was the first employee questioned by Salvati with regard to what occurred at the meeting on the night of June 12. Cataldo was able to testify without prompting or assistance only to the effect that he attended the meeting, that it was held in a very nice room and that Anthony Rossetti mentioned something about money and that the business was doing well and could use a union. Cataldo remembered that a figure was given by Rossetti but could not remember what that figure was. After being shown the investigatory affidavit taken by the Board's investigator in conjunction with the Objections to the Election, Cataldo stated that the reading of this statement did not refresh his recollection as to the exact amount. However Cataldo testified that it was a lot of money and "I know he's not making that," apparently referring to the Respondent.

Upon motion of Respondent's counsel, Cataldo's affidavit was admitted in evidence as past recollection recorded. This affidavit was the same affidavit that the Regional Director considered, among others, in coming to his original conclusion that the Objections to the Election were without merit. To summarize, Cataldo's affidavit stated that he attended the meeting which lasted about 50 minutes, that someone, not Rossetti, mentioned Salvati's house and that Rossetti told the gathered employees that it was their money that built this house and that they were "getting screwed" by the Company. Rossetti, according to the affidavit, told the assembled employees that the Company made "1.3 million dollars last year." However, Rossetti did not read this figure from any paper. Cataldo further stated in his affidavit that this surprised him and the other men and that "we must be getting screwed." Significantly,

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however, the last statement in the affidavit states that sometime around the week of June 22, 1972, Salvati approached Cataldo and told him that he needed "three guys to say that the Union sort of forced us to vote for it. This was not the case. I voted for the Union because I wanted it, even before Rossetti made the statement about the money."

The third witness produced by the Respondent was Peter Garrick, a former truckdriver. According to Garrick, on the night of June 12, at the meeting at the union hall, Rossetti entered the room where the men had been discussing the possible benefits that could be derived from unionization, opened his briefcase and looked around. The men asked about the wages that they were going to receive and Rossetti said that the men would probably be receiving an increase. (Evidently if the Union were to win the election.) They were all wondering how much of a raise and Rossetti said something about "Henderson made a million dollars" Garrick's reaction was one of being overjoyed after first being shocked that the Respondent had made so much money. In other respects, Garrick's testimony was vague and his recollection of the rest of statements made by Rossetti, if any, was not good. Accordingly, the Respondent used the statement given by Garrick to the Board's investigator at the time of the investigation of the Objections to the Election to refresh Garrick's recollection. This statement was unsigned. However, upon questioning by counsel, Garrick admitted that the statement was true at the time it was drawn up that he had read it over and that he had not wished to sign it.

However, Garrick admitted on cross-examination that the statement refreshed his recollection as to his thinking in June 1972. Upon questioning on cross-examination he admitted that his present recollection was as in his aforesaid statement, that during the meeting Rossetti said something about the Company making a million dollars last year, but that Garrick could not remember exactly at that time nor at the time he testified what was said about Salvati's house. Nor could Garrick remember who brought up the subject of Salvati's house during the conversation.

In the aforesaid statement Garrick stated that nothing was said at that meeting to change his mind about how he was going to vote in the election. Upon questioning by Respondent's counsel he stated and repeated what he had stated in the unsigned statement to the effect that he had already made up his mind and that was what he was going to do. He admitted that whatever was said at the meeting at the union hall that night was not going to change his mind. He was asked more specifically if the fact that there was a million dollars mentioned had caused him to change his mind one way or the other and Garrick answered that it did not. The foregoing, then, constitutes the significant portion of Garrick's testimony.

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With regard to the value of Salvati's house, it was stipulated at the hearing that at the time of the meeting on June 12 Salvati's home was worth approximately \$70,000 but that there was a mortgage thereon in the sum of \$30,000.

5 The final witness produced by the Respondent was Steve Atkins, who had worked for the Respondent as a part-time employee while attending college. Atkins remembered the meeting of June 12 and testified that it took place in a very impressive room at a long conference table and that
10 the persons attending the meeting sat in high back leather chairs. He further testified that until Rossetti came into the room the employees assembled discussed among themselves what a fair wage would be and whether they would be in better shape with or without the Union.

15 Further testifying, Atkins stated that Rossetti came in with a briefcase and opened it. Then the employees wanted to know where the money would be coming from and "somehow a million dollars was tossed in the air." Atkins testified that he did not know at the time of his
20 testimony who had said "million dollars." However, Atkins then testified he questioned Rossetti about whether the million dollars was gross profits before taxes or after taxes. Atkins testified "he definitely made the point that it was before taxes and before the profit had been taken out. In other words it was gross profit of Henderson Trumbull for 1971." Rossetti was looking at some papers from his briefcase when he said
25 this, according to Atkins.

Atkins' reaction to the statement was that he felt that he had been neglected and had been used by the Respondent.

30 Atkins also gave a statement to the Board investigator investigating the objections to the election but his statement, like that of Garrick, was unsigned. However, he testified that the matter contained in the statement prepared from Atkins' answers to questions by the Board investigator was the truth and contained "what was said at
35 the meeting did not cause me to change my mind about how I was going to vote in the election." Atkins adopted the statement but for personal reasons refused to sign it.

40 Atkins further testified that before the election, but after the meeting, he explained to Cataldo, Garrick and an employee named J. C. Anderson that Henderson Trumbull did not "make a million dollars profit" and that "it was like before the electric light bills and utilities were paid, before the taxes were paid and, you know, there were a lot of things that have to be considered that just wasn't
45 profit."

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

It should be noted that Garrick, Atkins and Cataldo were all discharged within a very short period after the election in June 1972. Atkins admitted that the reason given to him for his discharge was that he, among other employees, had been guilty of theft and defrauding the Respondent. It should be noted that there was no admission of this by Atkins but that this was merely the reason given to him by the Respondent for his discharge. It should also be noted that Atkins was the most articulate and the best educated of the three former employees who testified.

Introduced into evidence by Respondent were two financial statements made by the Respondent's certified public accountants. The first statement was for the fiscal year ending March 31, 1971. This statement showed sales for that year of \$843,637. It showed a gross profit on sales of \$260,371 and a net income after all expenses including Federal and State Income taxes, salaries, etc., of \$11,669. However, this statement although covering the period for the year ending March 1, 1971 was not made available to the Respondent or anyone else until September 8, 1971, the date it was submitted to the Respondent by Respondent's certified public accountants. Additionally, it should further be noted in connection with all of the foregoing, that the Respondent, a retailer, stipulated in the Consent Election Agreement that it had gross sales for the year preceding the said stipulation in excess of \$500,000.

A second annual statement covering the fiscal year ending March 31, 1972 showed gross sales of \$973,903 and a net income after all else was deducted, including State and Federal taxes, of \$16,873.

Also introduced into evidence by the Charging Party were two letters to the employees one dated June 5, 1972, the other dated June 7, 1972. The substance of these letters was that the Respondent was giving the employees many benefits which could not be increased by membership in the Union. The letters also stated that dues would be payable each and every month and that they could very well equal more than any benefit that could be derived from unionization.

Discussion and Concluding Findings

As stated by the Court of Appeals in its opinion leading to the remand in this proceeding, it is necessary in instances of the type presented here that a number of factors must be considered. Among these factors are 1) the materiality of the factual misrepresentation, 2) the influence that it might reasonably have had upon the employees, 3) the extent to which the declarant could reasonably be viewed by the employees

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as a person in a position to know the facts, 4) the opportunity for the other party to the election to reply and 5) the ability of the employees to evaluate the statement on the basis of their own independent knowledge of the facts. 3/

5 The Court of Appeals in its remand decision held that since Rossetti's statement to the employees was made virtually on the eve of election, there was virtually no opportunity for the Respondent to reply. This is adopted as a factual finding by the undersigned.
10 From all of the evidence presented it must be concluded that the Respondent did not learn of whatever statement Rossetti might have made to the employees during the meeting of June 12 until 2 days after the election.

15 Additionally, the Court of Appeals further found, and it is hereby adopted, that Rossetti could reasonably be viewed by the employees as a person in position to know the facts because, as found by the Court, Rossetti was not merely expressing an opinion or making a guess but, was, as in most local unions, the business agent, who may
20 be the only full-time union employee who "has the greatest power and most important functions in the local union, frequently more important than the Local's president who may be a mere figurehead." 4/ The Court further held that the function of the business agent which is to organize and serve as liason with management requires him to learn as
25 much as possible about the financial condition of the employer with whom he negotiates on behalf of its employees. His position, coupled with his mention of a specific profit figure, could reasonably have lead the employees to believe that he had ferreted out the information from financial books or records available to the Union through its banks or
30 other sources, or from initial conferences with company officers.

Under these circumstances, there remains but three factors to be considered.

35 The first factor would be that of the materiality of the misrepresentation. In order to make a judgment as to materiality it must first be determined what was said at the meeting by Rossetti. With regard to the actual statement that was made, the evidence given at the hearing supports the finding by the Regional Director in his Report
40 on Objections, that Rossetti made a statement to the effect that the Respondent in the year preceding the election "made" approximately 1 million or 1.2 million or 1.3 million dollars.

45 3/ N.L.R.B. v. Cactus Drilling Corporation, 455 F.2d 871, 79 LRRM 2551 (C.A. 5); N.L.R.B. v. Millard Metal Service Center, Inc., 472 F.2d 647, 82 LRRM 2345 (C.A. 1); Hollywood Ceramics Company, Inc., 140 NLRB 221, 51 LRRM 1600.

50 4/ Quoting Kheel, I Labor Law, paragraph 3.03 (2), page 3-17 (Mathew Bender, 1972).

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However, whether this had any impact on the employees is another, entirely different question. A close examination of the testimony as set forth heretofore in this decision shows that the only three employees produced by the Respondent to testify as to such impact were not influenced by the statement as to the possibility that the Respondent "made" 1.3 million dollars. All three employees, or, rather, former employees, testified almost uniformly to the effect that what Rossetti stated at that meeting on the night of June 12, 1972, had no influence upon the way they voted in the election in that each had made up his mind prior thereto, and that what Rossetti stated had not caused any of them to change their respective minds.

The Board has held, as well as the Courts, that impact, or reasonable impact, upon employees may very well be the deciding factor in setting aside an election or not setting aside an election for misrepresentation by one of the parties. The Board has stated ". . . But even where a misrepresentation is shown to have been substantial, the Board may still refuse to set aside the election if it finds upon consideration of all of the circumstances that the statement would not be likely to have had a real impact on the election. For example, the misrepresentation might have occurred in connection with an unimportant matter as that it could only have a de minimis affect. Or it could have been so extreme as to put the employees on notice of its lack of truth under the peculiar circumstances so that they could not reasonably have relied on the assertion. Or the Board may find that the employees possess independent knowledge with which to evaluate the statements." 5/

While it is true that the word "made" might have been somewhat ambiguous with regard to the feelings or knowledge of the employees at the meeting of June 12, 1972, it is certain from the testimony offered by the Respondent at the hearing herein that none of the employees testified that Rossetti stated that the 1.3 million dollars was profit. Additionally, former employee Atkins, who I found to be most articulate and intelligent, realized immediately as the words were spoken that this figure could not have been profits. Accordingly, with regard to Atkins, although he testified that he felt somewhat taken aback and felt that he had been used by the Respondent, he nevertheless was able to discern from his own knowledge and ability and to make the judgment that the word "made" did

5/ Hollywood Ceramics Company, Inc., 140 NLRB 221, 224. With regard to the importance of impact see also Bata Shoe Company 377 F.2d 821, 65 LRRM 2318; Graphic Arts Finishing Co., v. N.L.R.B., 380 F.2d 893, 65 LRRM 3038 (C.A. 4).

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necessarily mean profit and asked Rossetti whether the Respondent had made a profit of 1.3 million. Atkins credibly testified that Rossetti had answered in the negative, stating that this was before expenses, indicating that the sales were in the area of approximately a million dollars. Thus, one employee attending the meeting was sufficiently knowledgeable to realize that the figure quoted by Rossetti, whether 1.3 million or 1 million, did not mean profit.

Furthermore, Atkins testified without contradiction, and therefore credibly, that he later explained to Cataldo, Carrick and another employee who had attended the meeting that the amount stated by Rossetti was not profit and that the figure quoted by Rossetti was before other operating expenses and other costs had been deducted. Thus, I find and conclude that from the testimony of the employees, Rossetti did make a statement to the effect that the Respondent "made" somewhere in the neighborhood of 1 million dollars during the preceding year. However, I further find that at least with regard to the employees who testified at the hearing herein and at least one other employee the word "made" did not mean "profit" after Atkins' explanation to them.

It should also be noted, that the Respondent's own financial statement for the year ending March 1971 showed that the Respondent's sales had amounted to the figure of \$843,637. This did not differ very greatly from the approximately million dollar figure quoted by Rossetti. It could also have been what Rossetti meant when he stated "made." However, even without making these conjectures or attempting to guess from the evidence what Rossetti meant, it is clear that if four of the employees who voted knew before the election that the word "made" did not mean "profit," at least some of the other employees must have known the same inasmuch, as stated by Salvati in testifying, the Respondent is a small shop and matters get around and people know what is going on.

Finally, since, as stated above, the impact upon the employees is the key to whether an election should be set aside and since the only witnesses produced by the Respondent testified that the remarks made had no impact upon them with regard to the choice they made in the election, all of the foregoing becomes merely academic because the Respondent through its own witnesses has failed to prove and to show that the statement made by Rossetti had an impact on the employees. Having thus failed to show that the impact of the statement had an effect upon the employees and therefore an effect upon the election, I find and conclude that there was presented at the hearing insufficient evidence to recommend any change in the recommendations made by the Regional Director in his Report on Objections, which recommendations were adopted by the Board in its order certifying the Union as the bargaining representative of the Respondent's employees.

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

5 In coming to the foregoing conclusion I have not disregarded
the statement of the Court that where an election is as close in its
result as the one with which this proceeding is concerned, that even
minor misconduct cannot be summarily excused on the ground that it
10 could not have influenced the election. However, considering even the
closeness of the election here, the misconduct alleged to have been
engaged in by Rossetti is not being summarily excused on the ground that
it could not have influenced the election because the record shows that
it did not influence the election insofar as the only employees whom
15 the Respondent called upon to testify stated that they were not so
influenced. It would be wrongful to speculate that the employees who
did not testify were influenced by the statement, especially in view of
the fact that Atkins explained the matter to Cataldo and Garrick and
another employee and, furthermore, the employees who did testify testified
20 that there was, in fact, no impact upon them, as a result of Rossetti's
statement with regard to the amount made by the Respondent.

Moreover, in coming to this conclusion I have also considered
the fact that, as expounded by Respondent in its brief, much time has passed
25 since the events and that at this point the recollection of the witnesses
is somewhat clouded. However, the statements introduced by Respondent
definitely show that, at least with regard to Cataldo and Atkins, in
their interview with the investigator for the Board, shortly after the
Objections to Conduct Affecting the Election were filed, they both
30 stated, as did Garrick, that Rossetti's statement had no influence upon
them. Accordingly, the passage of time did not in any way change the
fact that these employees were not influenced by Rossetti's statement
and, therefore, his statement did not have sufficient impact on the
employees to warrant setting aside the election.

By reason of the foregoing, I find that the Respondent has
failed to sustain its burden that the alleged conduct of Rossetti affected
the results of the election. Accordingly, I further find the Respondent
35 has wrongfully failed to bargain with its employees' certified bargaining
representative and that such failure to bargain upon request constitutes
a violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

40 In view of the foregoing findings of fact, the conclusions of
law heretofore made by the Board in its decision in Case No. 2-CA-12796,
205 NLRB No. 8, dated August 6, 1973, are hereby adopted in toto.

DECISION AND REMAND OF ADMINISTRATIVE LAW JUDGE

Accordingly, in view of the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, I hereby adopt the order of the Board dated August 6, 1973, in toto, as the recommended order of this decision, and incorporate the same by reference herein.

Dated at Washington, D.C.



Morton D. Friedman
Administrative Law Judge

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

HENDERSON TRUMBULL SUPPLY CORPORATION
Respondent

- and -

TEAMSTERS LOCAL 191 A/W THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
Charging Party

HENDERSON TRUMBULL SUPPLY CORPORATION
Employer

- and -

TEAMSTERS LOCAL 191 A/W THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA
Petitioner

CASE NOS.

2-CA-12796

2-RC-15878

April 18, 1975

EXCEPTIONS BY RESPONDENT/EMPLOYER TO
DECISION AND TO CERTAIN RULINGS BY
THE ADMINISTRATIVE LAW JUDGE

Attorneys for
Respondent/Employer

Dwight F. Fanton and
C. D'Arcy Didier
Of Pullman, Comley, Bradley & Reeves
855 Main Street
Bridgeport, Connecticut 06604

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

The Respondent/Employer respectfully excepts to:

(1) The rulings of the Administrative Law Judge excluding testimony by Mr. Atkins as to the effect of Mr. Rossetti's misrepresentation. Specifically the Respondent objects to the striking of Mr. Atkins' testimony on pages 107, 111-113 and 118 of the record where he testified that "...we were all feeling that we were getting the shaft from Henderson..." that "...we were all sort of unified within ourselves...to screw Henderson Trumbull," and that "...we were saying they had really, really made that much money?" Judge Friedman's ruling that Mr. Atkins could only testify as to statements made by specific individuals and not as to general statements made by the employees at the meeting is also error in view of the length of time elapsed between the incident and the hearing and is contrary to the remand of the Second Circuit Court of Appeals which stated that there must be a determination of "the influence that [the misrepresentation] might reasonably have had upon the employees..."

(2) The failure of the Administrative Law Judge to credit Mr. Salvati's testimony where it contained matter not contained in his affidavit given to the Board's investigator. This determination on page 6 of the decision, summarily dismisses

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

important testimony concerning the state of mind of the three witnesses, and by reference, all the employees attending the meeting, only a few days after the misrepresentation was made. It is not denied that a judge must determine questions of credibility of a witness, but it is clearly error to summarily dismiss, as unreliable, testimony that does not contradict a previous statement but merely adds additional information, especially when no contradictory evidence was introduced. The hearing ordered by the Second Circuit was clearly an order to amplify the meager record the Regional Director had compiled and upon which he had erroneously relied. For Judge Friedman to rely on testimony by the employee witnesses as they amplified their statements made to the Board's investigator and to dismiss Mr. Salvati's as being per se unreliable is certainly an abuse of discretion if not an error of law.

(3) To the failure of the Administrative Law Judge to determine whether the factual misrepresentation was material. Since Judge Friedman erroneously found that there was no evidence that anyone believed that "made" meant "profit" at the time of the election, he made no determination whether the difference between the Company's 1971 profit or even gross

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

profit was materially different than the \$1.3 million figure. It is the Respondent's position that because of Exception 4 below such a determination should have been made. Further, the Respondent contends that the difference between the Company's 1971 profit of \$11,669 or even its gross profit of \$260,371 and \$1.3 million is material.

(4) The analysis of the law by Judge Friedman on pages 11 and 12 of the decision inferring that since the Respondent failed to produce specific testimony of an employee leaving the meeting of June 12, 1972 and voting in the election of June 14 who believed that the Company had made a profit of \$1.3 million, that no employee could reasonably have believed that the phrase "made \$1.3 million" meant made a profit of \$1.3 million dollars. The Second Circuit clearly did not require the Respondent to meet such a burden. Since the Court stated that "made" would "clearly imply to the average nonaccountant...that the Company had 'gained' or 'profited' by that amount," all that had to be determined was whether Mr. Rossetti actually used the word "made" and, if so, whether the Union overcame the inference by proving that it was explained to the employees that this

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

referred to gross sales. In the alternative, Judge Friedman's analysis was contrary to law and the remand when he failed to determine from the testimony whether it was reasonable to believe that a single employee understood, at the time of the election, that Mr. Rossetti had referred to \$1.3 million in profit, since there was a possibility of a later finding that the misrepresentation was material and the influence on one vote would have changed the outcome of the election.

(5) The summarization of Mr. Atkins' testimony by the Administrative Law Judge on page 12 of the decision to the effect that Mr. Atkins believed that Mr. Rossetti meant that "sales were in the area of approximately a million dollars." On page 109 of the record Mr. Atkins specifically stated that he thought Mr. Rossetti was referring to "the gross profit of Vanderson Trumbull for 1971." Later in his testimony, on pages 149 and 150, he stated that the term "grossed" to him meant "before the electric bills and utilities were paid, before the taxes were paid and...just wasn't [all] profit." No mention of his understanding that sales were in the area of a million dollars was made by Mr. Atkins.

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

(6) The apparent determination that the employees had independent knowledge with which to evaluate Rossetti's misrepresentation. The Respondent can only conclude that such was the Administrative Law Judge's conclusion when he stated that

"...it is clear tha' if four of the employees who voted knew before the election that the word 'made' did not mean 'profit' at least some of the other employees must have known the same..." (Decision page 12)

Such a conclusion is erroneous since it is contrary to the evidence produced by the Respondent and since the Union failed to produce any testimony of independent knowledge. There is further error since even if the "clarification" by Atkins had spread, it had no effect of producing independent knowledge since Atkins explained that Rossetti was referring to gross profit as discussed in Exception 5.

(7) The requirement that the Respondent produce objective evidence of an employee changing his vote before the Respondent can be held to have met the burden of showing that the misrepresentation had an "impact" on the election. The Administrative Law Judge apparently required such evidence to show the requisite influence stating that:

"The Respondent through its own witnesses has failed to prove and to show that the statement made by Rossetti had an impact on the employees." (Decision page 12)

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

and also that:

"The record shows that it did not influence the election insofar as the only employees whom the Respondent called upon to testify stated that they were not so influenced."
(Decision page 13)

The overwhelming legal authority indicates that there need be no such showing and that subjective evidence is sufficient to show improper influence. The actual burden placed on the Respondent normally is to show that the misrepresentation reasonably affected the result of the election, and that this burden is somewhat reduced when the misrepresentation concerns financial matters and when the election margin is narrow. The Judge erred in imposing too high a burden on the Respondent and in failing to apply the proper standard.

(8) The failure of the Administrative Law Judge to recognize and apply the presumption of "impact" found by the Second Circuit in its remand. That decision indicates that if the Respondent shows: (a) that Rossetti was a Union business agent and stated that the company "made \$1.3 million, which the Court found would reasonably be taken by the employees involved to mean "profit", (b) that this was a substantial deviation from the truth, (c) that the Respondent was unable to respond

EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

to the misrepresentation, and (d) that the employees who heard it were unable to independently evaluate it, that there is a presumption that there was an "impact" on the election. This omission contrary to the dictates of the Court is clear error.

(9) The Administrative Law Judge's failure to apply to proper standard of the burden of proof on the Respondent in evaluating the evidence before him to determine whether it was reasonable to believe that the misrepresentation in question influenced the election. If the Second Circuit had not intended to establish the presumption discussed in Exception (8), the judge erred in not finding impact and therefore erred in not setting aside the election. There was sufficient evidence introduced by the Respondent to meet the proper burden of proof of "impact" discussed in Exception (7), and the failure to so find was error.

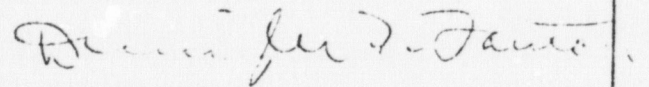
EXCEPTIONS BY RESPONDENT/EMPLOYER TO DECISION AND
CERTAIN RULINGS BY THE ADMINISTRATIVE LAW
JUDGE

(9) The Administrative Law Judge's failure to apply the proper standard of the burden of proof on the Respondent in evaluating the evidence before him to determine whether it was reasonable to believe that the misrepresentation in question influenced the election. If the Second Circuit had not intended to establish the presumption discussed in Exception (8), the judge erred in not finding impact and therefore erred in not setting aside the election. There was sufficient evidence introduced by the Respondent to meet the proper burden of proof of "impact" discussed in Exception (7), and the failure to so find was error.

RESPECTFULLY SUBMITTED,

HENDERSON TRUMBULL SUPPLY
CORPORATION

By



Dwight F. Fanton and
C. D'Arcy Didier
Of Pullman, Comley, Bradley &
Reeves
855 Main Street
Bridgeport, Connecticut 06604
Its Attorneys

TRANSCRIPT OF HEARING BEFORE NLRB, SECOND REGION.

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD

2 2nd REGION

3 -----X

4 In the Matter of: :

5 HENDERSON TRUMBULL SUPPLY CORPORATION :

6 Employer :

7 -and- :

8 TEAMSTERS LOCAL 191, a/w THE INTERNATIONAL :

9 BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN :

AND HELPERS OF AMERICA : Case No.

2-RC-15876

10 -and- :

11 HENDERSON TRUMBULL SUPPLY CORPORATION :

12 -and- :

13 TEAMSTERS LOCAL 191, a/w THE INTERNATIONAL :

14 BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN :

AND HELPERS OF AMERICA :

16 -----X

16

17 26 Federal Plaza

17 New York, New York

18 January 15, 1975

18 The above entitled matter came on for hearing, pursuant

19 to Notice at 11:00 o'clock A.M.

20 BEFORE:

21 MORTON D. FRIEDMAN, Administrative Law Judge

22 APPEARANCES:

23 ALEXANDER O. ROSENBERG, ESQ. 26 Federal Plaza, New York, New

24 York, appearing on behalf of

General Counsel

25

APPEARANCES: (Continued)

DWIRCHT F. FANTON, ESQ.

RAYMOND E. BALDWIN, ESQ.

C. D'ARCY DIDIER, ESQ.

Pullman, Comley, Bradley & Reeves,
Esqs., 855 Main Street, Bridgeport,
Connecticut, appearing on behalf of
the Company.

NORMAN ZOLOT, ESQ.

9 Washington Avenue, Hamton,
Connecticut, appearing on behalf
of the Petitioner.

I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS VOIR DIRE</u>
FRED SALVATI	7	26	50/101	57
GERALD CATALDO	59	76		72
PETER GARRECK	80	90	96	
STEVE ATKINS	102	143	150	
RAYMOND BALDWIN	160			

E X H I B I T S

<u>BOARD EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1A to 1G	5	5

DEFENDENT'S EXHIBITS:

1	20	
2		23
3		26
4		74
5	133	133

CHARGING PARTY'S EXHIBITS:

1	29	30
2	41	
3		42

P R O C E E D I N G S

JUDGE FRIEDMAN: Gentlemen, the hearing is opened.

This is a hearing on remand from the Court of Appeals in the case of Henderson Trumbull Supply Corporation, case numbers 2-CA-12796 and 2-RC-15876.

The name of the Administrative Law Judge is Morton D. Friedman.

Will counsel please note their appearances for the record.

MR. FANTON: Dwight F. Fanton of Pullman, Comley, Bradley and Reeves, 855 Main Street, Bridgeport, Connecticut, 06604, for the Employer, along with my partner Raymond E. Baldwin and my associate C. D'arcy Didier.

MR. ZOLOT: Norman Zolot, 9 Washington Avenue, Hampton, Connecticut, 06518.

MR. ROSENBERG: For the Regional Director, Alexander P. Rosenberg, 26 Federal Plaza, New York, New York 10007.

JUDGE FREIDMAN: Before we begin gentlemen, I think maybe we should lay down some rules as to where we are going in thing.

As I read the remand, there are actually only two matters that we are going to take testimony on this morning.

As I understand it, one of them is on the misrepresentation with regard to the earnings of the corporation and the other I don't know whether we are going to go ahead with it

1 or not and that is the cost of the house of an officer or
2 Vice President of the Corporation.

3 MR. FANTON: Mr. Salvati.

4 JUDGE FRIEDMAN: I think we are going to limit our
5 testimony to that and nothing else except whatever Mr.
6 Rosenberg wants to put in with refusal of bargaining.

7 I think the only reason for the remand is to take
8 testimony on these two objections for which the Respondent
9 has refused to recognize the unit as to the certification,
10 I believe that's it.

11 Is there anything else that anybody wants to suggest
12 at this time?

13 MR. FANTON: Excuse me, your Honor, I think those are
14 the issues, that whether the statement was made as alleged
15 at this union meeting by Mr. Rossetti.

16 The effect is the same in connection with campaign
17 literature, whatever bears on that particular issue, and of
18 course, the reference to the house and the cost of the same
19 is the same framework.

20 Those are the issues as I understand it to be heard
21 and determined on the remand.

22 JUDGE FRIEDMAN: Do you have anything to add to that
23 Mr. Zolot?

24 MR. ZOLOT: I assume in connection with the first
25 element we will be discussing more than just one, the meeting,

1 but we will discuss the whole circumstances.

2 JUDGE FRIEDMAN: Oh, yes.

3 I think we will take testimony on the entire context
4 on which the matter arose, of course.

5 How do you want to proceed Mr. Rosenberg?

6 I really think this is a matter more or less for the
7 Union or the Employer rather than for the Board, rather than
8 General Counsel.

9 Suppose you put in your formal papers at this time.

10 MR. ROSENBERG: Please mark these as Board's Exhibit 1A
11 through G.

12 (Whereupon, above described documents
13 were received and marked Board's
14 Exhibits 1A to 1G for identifica-
15 tion, of this date.)

16 JUDGE FRIEDMAN: Have all the parties seen all the
17 papers?

18 MR. FANTON: Yes, no objection.

19 JUDGE FRIEDMAN: They are received.

20 (Whereupon, Board's Exhibits 1A to
21 1G heretofore marked for identifica-
22 tion, were received into evidence,
23 of this date.)

24 MR. ROSENBERG: Gentlemen, I think that I ought to
25 explain my role here as representative of the New York
26 Region.

27 My role is to see that the evidence adduced during
28 the investigation of this case by the Region is made available

1 to the Administrative Law Judge and pursuant to this function
2 I may ask some questions and if necessary call witnesses.

3 I want to emphasize that I am not here to support any
4 preconceived position.

5 My services are equally available to the Trial Examiner
6 and to all the parties.

7 In addition, however, gentlemen, it is my role since
8 we have a combined CA and RC case to protect those elements
9 of the CA case which already have been decided by the Board
10 and I can assure you that I will strenuously object to any
11 unit issues being litigated in this proceeding.

12 Your Honor, one other item.

13 I have discussed it with both of the parties.

14 We have a number of employee witnesses or former
15 employee witnesses who will be testifying to what went on
16 at the meeting prior to the election at which the alleged
17 misstatements were made and since this case will largely
18 turn on credibility findings I have suggested that we maintain
19 a separation of witnesses and only the employee witness --
20 separation of the employee witness and that only the employee
21 witness who is testifying should be in the hearing room.

22 JUDGE FRIEDMAN: That is a good idea, Mr. Rosenberg.

23 I am sure that neither of the parties will object to
24 that and I note that we have one representative from the
25 Employer, is that correct, everybody else is counsel.

1 MR. FANTON: One representative of the Union.

2 MR. ROSENBERG: Yes.

3 JUDGE FRIEDMAN: All right, then, I think that the way
4 to proceed now would be probably for Mr. Fanton to carry the
5 ball.

6 MR. FANTON: All right, fine, your Honor.

7 Mr. Salvati, will you take the witness stand, please.
8 Whereupon,

9 FRED SALVATI

10 called as a witness, having been first duly sworn in by
11 Judge Friedman, was examined as follows:

12 JUDGE FRIEDMAN: Please state your name and address
13 for the record.

14 THE WITNESS: Fred Salvati, 22 Horse Shoe Drive,
15 Trumbull, Connecticut, 06611.

16 JUDGE FRIEDMAN: You may proceed, Mr. Fanton.

17 DIRECT EXAMINATION

18 Q (By Mr. Fanton) Mr. Salvati, will you describe what
19 your position is with the Employer, the Respondent in these
20 consolidated cases?

21 A I am Vice President of Henderson Trumbull Supply and
22 I have been so for the last 8 years.

23 Q What are your duties and responsibilities in that
24 capacity?

25 A I am in charge of all personnel. I am in charge of

1 equipment.

2 I am in charge of purchasing materials for the store
3 and I am in charge of sales.

4 Q Are you familiar with the financial records of the
5 company?

6 A Yes, I am.

7 From time to time I do have to see the financial
8 records.

9 Q Now, referring to the election which is an issue in
10 this case held on June 14, 1972, was there any statement or
11 irregularity which came to your attention shortly after that
12 election was held relating to the --

13 MR. ZOLOT: I object, that characterizes his testimony.

14 It is improper.

15 JUDGE FRIEDMAN: Sustained.

16 Q (By Mr. Fanton) Mr. Salvati, suppose you tell us
17 what took place to your knowledge shortly after the election
18 was concluded, when the tally ballots were served, relating
19 and involving your employees, relating and involving your
20 employees.

21 A The election as we know by the records took place on
22 June 14th which was a Wednesday.

23 Q 1972?

24 A 1972.

25 The following evening, Thursday, one of the employees

1 Joe Ballester, came to me and made a statement to the
2 effect that I guess you heard what the Union told our boys
3 as far as the amount of money the company made.

4 MR. ZOLOT: Your Honor, I would have to object to the
5 characterization of the statements being offered because they
6 are hearsay as far as this witness is concerned.

7 I realize that he may have the right to offer this
8 evidence not of the truth of the statement, but merely as
9 what has been said to him.

10 JUDGE FRIEDMAN: I will take it for that purpose and
11 that purpose only.

12 I am sure that the Respondent will put that gentleman
13 on the stand.

14 Continue.

15 THE WITNESS: At that time I said, no, I hadn't heard
16 anything.

17 The following evening, Friday evening --

18 Q (By Mr. Fanton) Just before we leave Mr. Ballester,
19 did he indicate anything as to whether he attended the
20 meeting in question?

21 A No, he had not attended the meeting in question mainly
22 because --

23 Q Never mind the reason.

24 A He had not attended the meeting in question.

25 Q If I understand your testimony correctly, he asked you

1 if you had heard about it?

2 A Right.

3 Q Take it from there.

4 A And I said I have not heard anything about it.

5 The following evening, a Friday evening, after we had
6 closed up, this was after closing hours, one of our jobs
7 was still on the road at that particular time and I was in the
8 office waiting for him to come back.

9 This particular fellow is Jerry Cataldo.

10 Q How do you spell the Jerry?

11 A I believe it is G-e-r-r-y.

12 Q Thank you, continue.

13 A When Gerry got back into the office, we were there and
14 I said to him, Gerry, I hear a comment was made at the meet-
15 ing about how much money this company makes and Gerry said
16 yes, a comment was made.

17 Gerry was at this meeting.

18 I said --

19 MR. ZOLOT: Are you saying that as a fact or what --
20 representation?

21 JUDGE FRIEDMAN: This is what was said?

22 THE WITNESS: This is what I was being told by these
23 people.

24 I can only relate what was told.

25 JUDGE FRIEDMAN: This is what Mr. Cataldo told you?

1 THE WITNESS: Yes.

2 JUDGE FRIEDMAN: Continue.

3 THE WITNESS: I asked him what was said about the
4 amount of money that the company made.

5 He said that Rossetti told the men at the meeting that
6 the company made 1.3 million, so, I said to him, the company
7 made 1.3 million what? That we did 1.3 million in sales
8 or was that in profit and at that time he said no, the
9 company made 1.3 million in profit and I can remember my
10 reactions at that time because I was astounded.

11 We made 1.3 million? I said, don't you realize how
12 much business we would have to do to make that amount of
13 profit and he was just shrugging more or less, there was no
14 comment really made at that particular point.

15 And at that time he also said, well, that's not the
16 only thing, he said how do you think -- you, meaning the men --
17 how do you think that Salvati got his big house up there and
18 I says, well, what do you mean?

19 And he says, well, the company is making a lot of
20 money and that's how you got your house.

21 So, I just laughed at that stage and it was over.

22 The conversation was over more or less between Gerry
23 Cataldo and I that evening.

24 Q (By Mr. Fanton) I am not clear on one thing.

25 Was Gerry Cataldo -- how did this comment about your
house come up?

1 What was supposed to have -- who was supposed to have
2 said that?

3 A Supposedly Mr. Rossetti made that comment.

4 Q This was at the same meeting?

5 A Yes.

6 Q When was this meeting, this was a union meeting?

7 A This was a union meeting.

8 MR. ZOLOT: I am going to have to object.

9 This is meeting. I realize that it is two years ago.

10 MR. FANTON: I am asking when the meeting was held.

11 MR. ZOLOT: You characterized the meeting.

12 It seems very unclear as to what Mr. Cataldo is telling
13 him compared to his own mental processes.

14 It is getting confused.

15 JUDGE FRIEDMAN: I will have to sustain that and
16 confine the testimony just what Mr. Cataldo told you and what
17 you did as a result of what Mr. Cataldo told you.

18 MR. FANTON: Thank you, your Honor.

19 MR. ROSENBERG: Before we proceed, is there an under-
20 standing that Mr. Zolot's objection as to the truth of the
21 matter contained in the statements is not being received,
22 but only what these gentlemen said?

23 JUDGE FRIEDMAN: This is introductory matter I am
24 certain.

25 MR. FANTON: Yes. This is corroborative and relates to

1 the credibility of the witness who is going to follow.

2 Mr. Salvati gave a statement at the time. He has read
3 it and he is now telling us what this man told him at that
4 time.

5 JUDGE FRIEDMAN: Mr. Zolot's objection was directed to
6 whether or not Mr. Salvati was talking about when the meeting
7 was held or what Mr. Cataldo told him as to when the meeting
8 was held.

9 MR. PANTON: Yes.

10 JUDGE FRIEDMAN: Continue.

11 THE WITNESS: So, that was Friday evening.

12 Q (By Mr. Panton) This was Friday evening, can you fix
13 the date?

14 A That was Friday evening, June 1st.

15 Q 1972?

16 A Yes.

17 Right after that conversation with Mr. Cataldo I was
18 still in the office.

19 I then called Mr. Henderson who is the President of
20 Henderson Trumbull Supply.

21 I told him the conversation that had just taken place
22 between Gerry Cataldo and myself.

23 Mr. Henderson at that time told me that he was going to
24 contact --

25 MR. ZOLOT: I object.

1 I don't see how this is material or relevant.

2 THE WITNESS: I am just trying to go in chronological
3 order as to what happened, that's what you want to hear.

4 MR. FANTON: It's introductory.

5 I think it may have some relevance, your Honor.

6 I think it is a statement of how Mr. Salvati acted as
7 to what he was told by Mr. Cataldo.

8 It is in the course of events that transacted immediately
9 after the election and they are related to the issues, your
10 Honor has before him.

11 MR. ZOLOT: I would disagree, because we are talking
12 about what employees, eligible to vote in the election held
13 or reported, and that's all, not the internal communications
14 between officers of the Employer.

15 I certainly don't think it is material and we are
16 wasting time.

17 MR. FANTON: We are wasting time with an objection to
18 a question that is purely introductory.

19 JUDGE FRIEDMAN: I am going to permit it, but, let's
20 get to what actually took place at the meeting, that's the
21 only thing I am interested in.

22 MR. FANTON: Yes, your Honor.

23 JUDGE FRIEDMAN: Continue.

24 THE WITNESS: The following Monday, the following
25 Monday morning when we came into work I asked Gerry Cataldo

1 if he would be willing to go with me down to our lawyer's
2 office and give him the same information he had given me
3 on Friday night.

4 Cataldo was a little nervous about it. He felt as
5 though --

6 JUDGE FRIEDMAN: Just tell us what happened.

7 Did he eventually go?

8 THE WITNESS: Yes.

9 We went down to the lawyer's office.

10 We went to see Mr. Baldwin.

11 When we got to the office, I just asked Gerry to give
12 Mr. Baldwin the same information he had given me.

13 Q (By Mr. Fanton) Now, Mr. Baldwin is my partner,
14 Raymond E. Baldwin who is sitting here in the Courtroom,
15 is that correct?

16 A That's correct.

17 At that time Gerry Cataldo told Mr. Baldwin the
18 information that he had told me.

19 MR. ZOLOT: Again, this is very illusive as to what
20 was said.

21 THE WITNESS: I shall repeat it then.

22 He told Mr. Baldwin that at the meeting of the union,
23 at one of the union meetings, Mrs. Rossetti made a statem~~at~~
24 that the company had made 1.3 million and also that there
25 was a statement made by my home being worth 75 or \$80,000

1 and I got it because of the amount of money the company was
2 making and during that meeting with Mr. Baldwin, Cataldo
3 said that we, the men felt as though we were shafted.

4 Q These were his words?

5 A These were his words at that particular meeting.

6 We finished the meeting and I went back to the office
7 and I asked Steve Atkins, another employee -

8 Q Before you leave the meeting, this was in our office,
9 is that correct?

10 A Yes, at the lawyer's office.

11 Q Now, did Mr. Baldwin ask Mr. Cataldo any questions?

12 A Yes.

13 Q What questions did he ask him?

14 A He asked him what effect these things had on the men
15 and that's when Cataldo said we felt as though -- we felt
16 as though we had been shafted, crapped on, that was the
17 comment made at that particular time.

18 Q Now, you went back to the office?

19 A I went back to the office, right, and I asked Steve
20 Atkins to come in, and Steve and I went back into a small
21 coffee room that we had and I talked to Steve.

22 I asked him, I said, Steve, I understand that a comment
23 was made at the union meeting about the amount of money the
24 company made and Steve said, yes, that's right, and I said,
25 I understand that you were told that one point three million

dollars was made by this company and he said, right, I said 1.3 million in sales or 1.3 million in profit?

And he said, profit, and I said, Steve, here you are a college boy and I said, don't you realize how much business we would have to do to make 1.3 million and there was no comment made by him at that time, just kind of a thinking look, I remember that specifically.

I asked Steve if he would be willing to make this statement to a member of the National Labor Relations Board if we had to and he said yes.

After Steve left I called Peter Garrick.

I asked Peter the same thing, I asked him, I says, Peter, I understand a comment was made about this 1.3 million and he says, yes, and I again specifically asked if it was sales or profit and he indicated to me it was profit and I made the same comment to him, I said, you are a college boy, don't you realize, I said, to make 1.3 million we would have to do a fantastic amount of sales and again, there wasn't any definite statement made to that statement.

I asked Peter if he would be willing to talk to the National Labor Relations Board and he said he would.

Right after that I called --

Q Was this still on Monday?

A Yes, as soon as I got back to the office with Cataldo, this followed immediately.

Q This was June 19, 1972?

1 A Yes, June 19, 1972, right after I got through talking
2 with Steve and Peter I called Mr. Baldwin and I gave him the
3 information of what had just taken place and they handled it
4 from there.

5 Q Our office handled it from there?

6 A Yes.

7 Q Now, Mr. Salvati, in the course of talking with these
8 three employees, did he identify the date of the meeting, in
9 question, the union meeting at which these statements were
10 made?

11 A Well, they didn't have to identify it to me.

12 It was the last meeting.

13 I know when the last meeting was, it was on Monday
14 June 12th.

15 The election on that Wednesday, June 14th.

16 Q How did you know about the date of the Union meeting?

17 A I knew about it, I mean in a small organization like
18 ours you don't keep anything secret for very long.

19 One guys tells one guy and it is just told, that's
20 all there is to it.

21 Q You were told?

22 A Yes.

23 Q Now, these employees in the bargaining unit who
24 participated in this election, what do they do from the stand-
25 poing of their duties and responsibilities from the company?

I don't mean specifically each one.

A The three people that I just mentioned?

Q No, how many did you have eligible on June 14th?

A At that time we had 15 eligible.

Q This was June 14th?

A Yes, out of 15, 13 actually voted.

One was a salesman who was away on vacation and one was a part time workers that I think they felt was not allowed to vote because of the part time status.

Q They did not vote?

A Yes.

It was broken down that way.

Q I am asking you now about the type of work they do so that the record will show it.

A Okay.

We have truck drivers who will of course deliver our materials.

We have a yard man who will take care of customers in the yard and we have a man who would be considered a warehouse and mill man and then at that time we also had some inside sales people voting, counter men who would wait on customers.

This was the responsibility of these people.

Q Were any of these employees in the normal course of their duties, performing their duties, have access to any of

1 the company's financial records?

2 A No.

3 Q Records on sales and profits and so forth?

4 A No, there would be no way they can get this information.

MR. FANTON: Now, so we can have these in sequence,
do you have any objection to our introducing this document?

7 (Whereupon, Mr. Zolot examined document.)

8 MR. ZOLOT: No.

9 MR. FANTON: I mean, you have no objection to that
10 being the letter that was sent by the Union to the employees?

11 MR. ZOLOT: No, I have no objection.

12 MR. FANTON: May that be marked, your Honor.

13 JUDGE FRIEDMAN: Please mark that document as
14 Respondent's Exhibit 1.

15 (Whereupon, above referred to
16 document was received and marked
17 Respondent's Exhibit 1 for identification, of this date.)

18 MR. FANTON: This is being offered particular your
19 Honor with reference to the next to the last paragraph which
20 reads, "Your employer does not want the Teamsters -- "

21 JUDGE FRIEDMAN: Is that going to be offered into
22 evidence?

23 MR. FANTON: Yes, it is, your Honor.

24 JUDGE FRIEDMAN: Well, you don't have to read it.
25 What is the date of the letter?

MR. FANTON: June 1, 1972.

JUDGE FRIEDMAN: That's by the union?

MR. FANTON: This is by the union to the employees who were voting in the election, who were eligible to vote in the election of June 14, 1972.

JUDGE FRIEDMAN: All right.

That has to be in duplicate.

MR. FANTON: Well, I have a few copies.

May I furnish the Court with one.

JUDGE FRIEDMAN: Then, you can furnish the Reporter with a duplicate within five days.

MR. FANTON: I will do it before we leave, your Honor.

JUDGE FRIEDMAN: All right, sir, you may proceed.

(By Mr. Fanton) Mr. Salvati, when did you first learn that this statement made by Mr. Rossetti at the union meeting of June 12th that you have been testifying about?

A I first learned about this statement on June 15, 1972, the day after the election.

Q The day after the election?

A Yes, sir.

Q Now, of the 15 employees who were eligible to vote on June 14th in that election in 1972, how many are presently employed by the Company?

A Two.

Q Who are those employees?

A Jerry Dumas and Joseph Ballester.

Q Now, Mr. Salvati, I am showing you a document entitled "Report on Henderson Trumbull Supply Corporation, financial and operating statements for the year ended March 31, 1971 and I ask you to examine that and identify it for us, if you will.

(Whereupon, witness complies.)

A That's correct, this is our financial statement for 1971 as made up by Capossela, Cohen, Engelson and Colman.

Q Who are Capossela, Cohen, Engelson and Colman?

A They are our accountants.

Q These are you outside independent auditors?

A That's correct.

Q Is this the statement that was submitted to you in the normal course of the audit of the company's books, the Respondent's books?

A Yes.

Q And accounts?

A Yes.

MR. FANTON: I offer this in evidence.

MR. ZOLOT: I object, it is dated March 31, 1971.

The election we are talking about is a 1972 election.

MR. FANTON: These were the supposed profits that were involved because at the time of this meeting this was all that could have been known, the 1971 and 1972 books were not closed at that time.

MR. ZOLOT: There was a statement as of March 31, 1972

1 and that should have been available.

2 MR.FANTON: That was not available and we will show it
3 later on.

4 Further, we have a witness, your Honor, who says that
5 Mr. Rossetti specifically mentioned the year 1971, what the
6 company made during 1971.

7 JUDGE FRIEDMAN: I missed the date of that report.

8 MR.FANTON: For the year ended March 31, 1971 which
9 would be the last fiscal year.

10 I have '72 as well, your Honor.

11 JUDGE FRIEDMAN: It wasn't the '72 year which preceded?

12 In other words, their fiscal year ended February 28,
13 1972 which would be the fiscal year immediately preceding
14 the election and the so-called alleged misstatement?

15 MR.FANTON: Both of these reports were referred to by
16 Mr. Salvati in his statement to the Board Agent and Mr.
17 Rossetti according to one of our witnesses did indicate that
18 this profit was made for the year 1971 without indicating
19 fiscal year or calendar year.

20 So, in order to give your Honor a true picture of both
21 years I am going to introduce both reports.

22 JUDGE FRIEDMAN: Received.

23 Would the Reporter please mark Respondent's Exhibit 2.

24 (Whereupon, above referred to
25 document was received and marked
into evidence as Respondent's Exhibit
2 of this date.)

1 JUDGE FRIEDMAN: Mr. Zolot, would you like to see the
2 copy?

3 MR. ZOLOT: Yes.

4 (Whereupon, Mr. Zolot examined document.)

5 JUDGE FRIEDMAN: Are you looking that over just to see
6 if that conforms --

7 MR. ZOLOT: I have never seen this document before.

8 (Whereupon, Mr. Zolot continues to look at document.)

9 Q (By Mr. Fanton) Now, Mr. Salvati, I show you a document
10 containing a similar heading from Capossela, Cohen, Engelson,
11 and Colman covering the financial and operating statements
12 for the year ended March 31, 1972 and ask if you will
13 identify that for us?

14 (Handing to the witness.)

15 A This is our financial statement for the year ending
16 March 1972, yes.

17 Q Is this in the same manner prepared by your outside
18 independent auditors?

19 A Yes.

20 Q And submitted to you as a statement of your financial
21 operation and condition of the Respondent for the period
22 ended?

23 A That's correct.

24 MR. ZOLOT: This statement wasn't available to him at
25 anytime prior to the election, so, I don't see again how it is

1 material or relevant.

2 MR. FANTON: It is relevant to show the extent of the
3 exaggeration and extent of the misrepresentation.

4 Furthermore, Mr. Rosenberg asked us to produce these
5 statements.

6 MR. ROSENBERG: I suggest that they should be available
7 for the hearing.

8 JUDGE FRIEDMAN: When did you actually receive these?

9 THE WITNESS: The 1972 I wouldn't know exactly, but,
10 we usually get it three months, maybe March, April, May, June
11 towards the end of June or so by the time they finish them
12 up and the 1972, about this same time when it was completed
13 by the accountants.

14 JUDGE FRIEDMAN: You don't know whether you received
15 this report before or after the election?

16 THE WITNESS: I couldn't say whether it was before or
17 after the election.

18 MR. ZOLOT: It is dated September 8, 1972, the document
19 itself.

20 MR. FANTON: For the purposes it certainly is relevant
21 to determine the extent of the exaggeration and extent of the
22 misrepresentation.

23 JUDGE FRIEDMAN: I am going to take them.

24 I don't think the date matters that much Mr. Zolot,

25 The fact is that it is a financial statement of what
occurred in the year ~~prior to when the statement was made.~~

Whatever knowledge the Respondent may have had personally with regard to its own profits or lack of profits might be brought out aside from the statements or assuming the statement was made by a union representative what knowledge he had or where he got his knowledge from.

I will take them for identification.

(Whereupon, above referred to document was received and marked Respondent's Exhibit 3 for identification, of this date.)

MR. FANTON: I have no further questions, your Honor.

JUDGE FRIEDMAN: Cross examination.

CROSS EXAMINATION

Q (By Mr. Zolot) Were you present when the consent agreement for the election took place?

A When the consent agreement?

Q That's right, or the election in question, on May 26, 1972.

A I really don't understand the question.

Consent by whom?

Q Do you understand what a consent election involves?

A No.

Q Were you present when Mr. Rossetti, Mr. Henderson signed an agreement with the National Labor Relations Board for the election?

A No, I don't believe I was present.

Q Were you aware that such an agreement had been signed?

1 A Yes, I was aware that there was going to be an election,
2 yes.

3 Q Were you aware of the fact that during the course of
4 the discussion concerning the consent agreement that the
5 company admitted that they had gross sales in excess of
6 \$500,000, that during the past fiscal year the employer
7 received a gross annual revenue from sales of more than
8 \$500,000?

9 A Gross sales?

10 Q Yes.

11 A I would have to say if that statement was made I
12 would agree with that.

13 Q That statement was made as far as you know to Mr.
14 Rossetti?

15 A By Mr. Henderson?

16 Q Yes.

17 A You are telling me that, that's the first time I am
18 hearing that, but I would have to agree that sounds fairly
19 accurate for the year 1971.

20 Q Fiscal year, whatever that portion was?

21 A Well, I would assume that he was talking about 1971.

22 Q The figure of a half a million dollars was conceived by
23 the company?

24 A In gross sales, that's gross sales.

25 Q Gross annual revenue.

1 A No, then I disagree with that statement.

2 If you are trying to say that revenue is profit, then
3 I disagree.

4 Q I am not saying anything like that, sir.

5 I am showing you the consent election form which is

6 MR. FANTON: I'm going to object to this line of
7 questioning unless it can be established that Mr. Salvati
8 used these words himself and was there and was a party to
9 this agreement.

10 To my understanding he was not present.

11 MR. ZOLOT: Mr. Rosenberg, left, so I don't have the
12 original consent agreement.

13 Let me hold that for a moment, I will come back to
14 that.

15 Q (By Mr. Zolot) Did you give a statement to the
16 Board?

17 A Yes.

18 Q To the National Labor Relations Board?

19 A Yes, I did.

20 Q Do you have a copy of that statement?

21 MR. FANTON: I think Mr. Rosenberg has a copy.

22 JUDGE FRIEDMAN: I don't know why Mr. Rosenberg left.
23 He should be here.

24 MR. FANTON: He invited us to take the copies from the
25 envelopes if we need them.

1 JUDGE FRIEDMAN: If he said so it is all right for you
2 to do it.

3 Q (By Mr. Zolot) Now, Mr. Salvati, when you made this
4 statement to the Board Examiner, did you tell him everything
5 you can recall that was said to you by the three men in
6 question?

7 A Everything that I can recall, yes.

8 Q Everything that you said at that time you told the
9 Examiner taking your statement?

10 A Right.

11 I told him basically the same thing that I told here,
12 right.

13 Q Did you give a written statement to your counsel prior
14 to seeing the National Labor Relations Board Field Examiner?

15 A No.

16 Q You gave him no statement is that right?

17 MR. PANTON: No written statement.

18 MR. ZOLOT: May I have this marked for identification?

19 JUDGE FRIEDMAN: Mark this document as Charging Party's
20 Exhibit 1.

21 (Whereupon, above referred to
22 document was received and marked
23 Charging Party's Exhibit 1 for
24 identification, of this date.)

25 Q (By Mr. Zolot) I show you what has been marked as
Charging Party's Exhibit 1 and ask you whether or not this is

1 statement that you gave on the 26th day of June, 1972 to
2 Field Examiner Clifford Chiet of the National Labor Relations
3 Board?

4 (Handing witness the document.)

5 A This is the statement, I signed it and initialed each
6 page.

7 MR. ZOLOT: I offer this full Exhibit in evidence,
8 your Honor.

9 JUDGE FRIEDMAN: Allright, received.

10 MR. PANTON: I have no objection.

11 MR. ROSENBERG: I have no objection, your Honor.

12 (Whereupon, Charging Party's Exhibit
13 1, heretofore marked for identifica-
14 tion, was received into evidence,
15 of this date.)

16 Q (By Mr. Zolot) Have you seen this statement since
17 you gave it to the Board in 1972?

18 A Yes, I saw it a short while ago when I came in.

19 Mr. Rosenberg handed it to me.

20 Q Had you seen it before today?

21 A No, I haven't.

22 Q Now, let me read you what you said to the Field Examiner
23 in 1972.

24 "On Friday night, June 16, 1972, Gerry Cataldo came
25 in late from a delivery. I was the only one in the store and
I asked him how much the union told him the company made and
he answered 1.3 million".

1 Is that right?

2 A That's correct.

3 Q You are the one that raised the question how much the
4 company made, he didn't according to this statement.

5 A According to the statement that I made --

6 I am asking you in connection with this statement.

7 A Yes.

8 Q Did you ask him as you testified today how could this
9 be possible?

10 A Did I ask him then?

11 Q That's right?

12 A Yes.

13 Q You did?

14 A Yes.

15 Q Why didn't you tell the Examiner that you told him
16 that?

17 A It's not there?

18 Q I just read your statement.

19 Would you like to see it?

20 (Handing document to witness.)

21 Q Is it there?

22 A No, it isn't.

23 Q So, that your addition today of your recollection to a
24 comment you said today that he was astounded, did he realize
25 how much business you would have to make to make this profit,

1 you didn't recall in June 1972 when you gave your statement
2 to the Board Examiner, is that correct?

3 A If it isn't there, then I apparently didn't give him
4 that information, right.

5 Q Then, in your statement with reference to the house,
6 you told the Examiner "Then he volunteered further informa-
7 tion to the effect that Rossetti told them I was living in a
8 house worth \$75,000 indicating in my belief that it was paid
9 for by money I was taking from the company."

10 Now, today you testified that Mr. Cataldo said that
11 it had been paid for out of the profits of the company.

12 Now, which is the correct statement, sir?

13 A That night, right there, when he made that comment,
14 it was my belief that this was indicated that I took the
15 money out of the company.

16 When he made the comment to Mr. Baldwin the following
17 Monday, I believe --

18 Q We haven't gotten to that yet, sir.

19 I am asking you about your statement given to the
20 Field Examiner in 1972 with respect to your house and Mr.
21 Cataldo's statement to you then as reported by the Field
22 Examiner and as testified to today.

23 Do you understand that?

24 A Right.

25 You asked me that question.

1 And at that night, that night, right then and there
2 by that statement it was my belief.

3 Q Your belief?

4 A That's right.

5 Q Today you testified that it was his belief.

6 A That's because he gave me and Mr. Baldwin that informa-
7 tion the following Monday and I was sitting right there.

8 That was his thinking also at the time. I mean, I
9 didn't ask him that night do you think that the company paid
10 for the house or something like that.

11 Q Well, he didn't tell you that night that he thought
12 your house was paid for out of the profits?

13 A Not that night, no.

14 Q Now, you said that he said it to you at a subsequent
15 time?

16 A The following Monday, right.

17 Q Did you tell the Board Examiner at anytime that Mr.
18 Cataldo had made that statement in your presence of Mr.
19 Baldwin's presence or anybody else's presence that he thought
20 that your house was paid for by the profits of the company?

21 A I didn't tell the Board Examiner that, no.

22 Q You didn't tell him at anytime, isn't that right?

23 A Well, I didn't.

24 Q All right.

25 Your statement further says that in the office of Mr.

1 Baldwin Mr. Cataldo repeated the statement hemade to me on
2 Friday, "Baldwin asked Cataldo what effect this statement
3 had on him and Cataldo answered that he felt he was getting
4 shafted by the company".

5 Is that right?

6 A Yes.

7 Q Did he tell you why, do you recall why he thought
8 he was being shafted?

9 A Well, they thought the company made 1.3 million
10 dollars in profit.

11 Q Did he tell you that?

12 A I don't know that he came out right specifically that
13 way.

14 Q He didn't say it, did he?

15 He didn't say he was getting shafted by the company
16 because of the statements made by Rossetti, did he?

17 A Yes, more or less, I mean if this statement was made
18 and then his comment was that we felt as though we were being
19 shafted and crapped upon, then you would have to normally
20 assume that it was because of that statement.

21 Q That's your assumption, isn't it?

22 A That would be the assumption of any intelligent person
23 having the conversation.

24 Q I am asking you sir, is that your assumption?

25 A Yes, that's my assumption.

1 Q But, he never said it?

2 MR.FANTON: He never said what?

3 THE WITNESS: He said he felt he was being shafter
4 and crapped upon.

5 Q (By Mr. Zolot) Your statement doesn't use the word
6 crapped upon, but you testified to that effect today.

7 Can you explain the difference?

8 A Yes.

9 At that particular time Mr. Baldwin of course was
10 present and at that particular time Mr. Baldwin had taken
11 notes of this particular conversation because there was not
12 going to be any signed statement and Mr. Baldwin's notes
13 indicated that that is what Mr. Cataldo said.

14 Q I am talking about your statement sir, to the Field
15 Examiner.

16 It is lacking any reference to the words crapped upon.

17 I am asking you to explain the difference in your
18 testimony today from your statement to the Field Examiner.

19 JUDGE FRIEDMAN: I think he just did.

20 Q (By Mr. Zolot) He talked about Mr. Baldwin.

21 A The day I gave the information to the Field Examiner,
22 I don't remember the date, a week or so or ten days after.

23 Q June 26th?

24 A And I spoke with Mr. Baldwin and Gerry Cataldo on June
25 16th, so, let's say about ten days later, ten days later I did

1 not remember that particular word crapped upon, okay, I
2 did remember the word being shafted.

3 Mr. Baldwin does have notes of the meeting between
4 Gerry Cataldo, himself and me.

5 In his notes it was indicated what Mr. Cataldo had
6 said.

7 Q You have no recollection of your own?

8 A No, I have no recollection of my own, only the notes
9 that were taken at that particular meeting.

10 Q And is your testimony based upon Mr. Baldwin's notes
11 taken at that meeting?

12 A I would think that with the notes at a particular
13 meeting are much more accurate than your memory.

14 Q Will you answer my question now, sir.

15 Is your testimony today based upon the written notes
16 taken by Mr. Baldwin at a meeting to which you referred to?

17 A Only on that particular item.

18 Q Only on that particular item?

19 A Yes.

20 Q You have an independent recollection of all other
21 items?

22 A Yes.

23 Q Now, I then show you paragraph 9 relating to Steve
24 Atkins.

25 I ask you if on June 26th, 1972 there was any conversa-

tion by you first to the effect that, did you realize how much profit we would have to make, that you were a college student, as you testified?

A If I made that statement on June 26th to the Examiner?

Q Yes.

A Yes, because I thought that was an important part.

Q Will you please find it in the statement you gave to the Examiner on that day?

(Handing document to the witness.)

A No, it is not in here.

Q On what basis do you recall having that conversation with the Examiner?

A From my memory.

Q And your memory today is better than it was in June '72?

A I would have to say in June of '72 when I was making that statement, these small details may not have seemed important to me.

Q Why does it seem important today, these small details as you refer to it?

A Because I was asked to recollect everything that took place.

Q Weren't you asked to recollect everything that took place in June '72?

A I don't know that I was. This was my first dealing in

1 anything like this and I just gave general statements of
2 things that I thought would be important.

3 I didn't think that every small detail would be
4 important.

5 Q Why do you think they are important today?

6 A Because of the extent of this situation has gone.

7 Q Were you told that it was important in your case to
8 make these comments?

9 A No.

10 I have to say that any comments I make are all my own.

11 Q Did you read the decision in this case?

12 A Yes.

13 Q And did you make these comments as a result of that
14 decision?

15 A No.

16 MR. FANTON: What comments?

17 MR. ZOLOT: The comments of his saying you area college
18 boy, don't you realize how much profit we would have to make
19 and got no answer to the statement.

20 THE WITNESS: I can specifically remember making that
21 particular statement.

22 Q (By Mr. Zolot) You can?

23 A Yes.

24 Q Now, you also recall I take it that Mr. Atkins, when
25 you asked him, did someone say anything about my house, he

1 said that someone asked how could Salvati afford such an
2 expensive house, is that right?

3 Is that your statement, your recollection of what he
4 said?

5 A Someone asked, that's about right.

6 Q He didn't actually say Rossetti had made any statement
7 to that effect, did he?

8 A No.

9 Q You didn't so testify to today that Rossetti, he
10 claimed Rossetti said anything about your house?

11 A Correct. That Rossetti had said anything about my
12 house?

13 Q That Atkins used Rossetti's name in connection with
14 the house?

15 A No, right.

16 Q The third person you talked about is Mr. Garrick.

17 As far as he was concerned you said, I asked the same
18 questions that I asked Steve and he answered much the same
19 way.

20 Is that your full recollection of the discussion?

21 A Yes.

22 Q Again, your statement to the Field Examiner which is
23 Charging Party's Exhibit 1, is devoid of any reference to a
24 comment that it would take a lot of sales to make 1.3 million
25 dollars.

You didn't tell that to the Field Examiner, did you?

1 A Apparently not.

2 Q Now, looking at Respondent's Exhibit 1 dated June 1,
3 1972.

4 How did you prior to that date communicate with the
5 employess concerning the company's position with respect to
6 the Union?

7 A Before June 1st?

8 Q Yes.

9 A Yes, I would have to say yes.

10 Q Did you communicate with them in writing or orally?

11 A I communicated orally with them, but I do believe the
12 company did send them a letter.

13 Q Did you send out two letters after June 1st, one
14 on June 5th and one on June 7th?

15 A If you have the letters -- I honestly don't remember,
16 but if you have the letters there I would say yes.

17 Q Let me show you a letter which is headed Henderson
18 Trumbull Supply Corporation Building Materials, June 5, 1972
19 and ask you if that is a copy of a letter distributed to
20 employees involved in the election?

21 A Yes, right.

22 Q This is signed by Homer D. Henderson.

23 MR.ZOLOT: May I offer this as Charging Party's Exhibit

24 2?

25 JUDGE FRIEDMAN: Please mark that as Charging Party's

1 Exhibit 2.

2 (Whereupon, above referred to
3 document was received and marked
4 Charging Party's Exhibit 2 for
5 identification, of this date.)

6 Q (By Mr. Zolot) Have you seen the letter sent by the
7 Union dated June 1, 1972 prior to the letter of June 5th?

8 A I don't honestly remember that if I had seen it or not.

9 Q Had there been talk about it?

10 A About the letter?

11 Q Yes.

12 A Not that I recall.

13 Q Did you also send a second letter on June 7th, 1972
14 concerning the Union?

15 A I see the letter in your hand, I would have to assume
16 so.

17 MR. FANTON: Don't assume so, read it.

18 (Whereupon, the witness reads the letter.)

19 Q (By Mr. Zolot) My question is:

20 Do you recall a second letter dated June 7, 1972?

21 A I remember this letter, yes.

22 Q Your name appears as the author of that letter, is that
23 correct?

24 A Yes.

25 MR. ZOLOT: May I offer this as Charging Party's Exhibit
3 in evidence.

JUDGE FRIEDMAN: Any objection?

1 MR.FANTON: No objection, your Honor.

2 JUDGE FRIEDMAN: Received.

3 (Whereupon, above referred to
4 document was received and marked
5 into evidence as Charging Party's
6 Exhibit 3, of this date.)

7 Q (By Mr. Zolot) Now, Mr. Salvati, can you tell me
8 whether or not when you signed this letter dated June 7, 1972
9 you had already seen or been aware of the letter of June 1st,
10 '72?

11 A I don't know if I was aware of it.

12 I don't think I was.

13 Q Well, you said earlier that in a small organization things
14 get around, is this one of the things that got around, the
15 Union had sent a letter?

16 A I don't remember seeing this particular letter.

17 Q Do you remember seeing any letters?

18 A Not to my recollection, no.

19 JUDGE FRIEDMAN: What's your answer?

20 THE WITNESS: No.

21 Q (By Mr. Zolot) Sir, I take it the letters of June
22 5th and June 7th as far as you are concerned were letters
23 which you were creating without intending to respond to the
24 Union's campaign?

25 A Without responding to any particular letter in specific
I would think that I would know what their campaign would
be.

1 I might put things in there that I would assume they
2 would tell them, yes.

3 Q Did you have any meeting with the men?

4 A Yes.

5 When did you have meetings with the men?

6 A Specific dates?

7 Q Yes.

8 A I don't recall what specific dates I had meetings with
9 them.

10 Q Specifically on June 12th did you have a meeting with
11 the men?

12 A Which was two days before the election?

13 Q That's right.

14 A That may have been the day, yes.

15 Is there any rule that indicates you can't have a meet-
16 ing a day before the election?

17 I don't know, we probably tried to get it as close to
18 the election as possible and within certain hours.

19 So, Monday sounds logical.

20 Q Do you recall what was discussed at that meeting?

21 A I don't recall anything specific, no.

22 Q Did you talk about the contents of your letter of June 7,
23 what a good job you had done for the people?

24 A What a good job I had done?

25 Q What a good job the company has done for the employees.

1 A I am sure we tried to point out our good points, yes.

2 Q Well, what I would like you to do at this point is
3 try to refresh your recollection as to what you did say at that
4 meeting.

5 A I don't remember what I said specifically at that
6 meeting.

7 If I did, I would be happy to tell you.

8 I just don't remember.

9 Q You did testify earlier this morning that you knew
10 that there was going to be a Union meeting that same day.

11 As you said, things get around.

12 Now, in anticipation of that union meeting, do you
13 recall what comments --

14 MR. FANTON: Just a minute.

15 I am going to object to that question, that was not
16 the witness' testimony.

17 The witness' testimony, he found out about the meeting
18 and I think counsel -- I don't say he is doing it deliberately,
19 but he is certainly misleading the witness with this
20 question.

21 MR. ZOLOT: He said he knew a meeting was being held
22 June 12th. He knew about it.

23 It was a small organization and one guy tells another.
24 He was specifically asked who and his answer was one guy tells
25 another and he was told of the meeting.

1 THE WITNESS: Yes, but I was told of the meeting on
2 June 15th by this particular fellow who told me that that
3 statement was made by Rossetti at this meeting.

4 I didn't about the June 12th meeting until June 15th.
5 He told me of the meeting and he said the meeting they had
6 Monday night.

7 Q (By Mr. Zolot) So, when you testified on direct
8 examination you knew about the meeting and now you want to
9 make it clear that you didn't know about the meeting until
10 after it had been held?

11 A I think if you will go back, I said I talked to Joe
12 Ballester on June 15th and at that time he said to me, did
13 you hear about the comment Rossetti made at the meeting and
14 I said what meeting and he told me the June 12th meeting.

15 Q Well, we will let the record speak for itself on that
16 point.

17 Now, let's go to the last point, sir.

18 Between June 15th and July 26th, did you discharge
19 Mr. Cataldo?

20 A I have some records.

21 I may have --

22 Q Did you discharge Mr. Atkins?

23 A Of that same year?

24 Q Yes.

25 A Again, I would have to look. I don't know if that
wasthe date.

1 We did discharge all of these men, but specific dates
2 I don't remember.

3 Q When did you discharge all of these men?

4 A Let me take a look at my records.

(Whereupon, witness examines records.)

6 MR. FANTON: Before Mr. Salvati answers that, I would
7 like to interpose an objection here because it seems it is
8 beyond the scope of direct.

9 MR. ZOLOT: It goes to the credibility of these
10 witnesses, because we will offer to show that this company
11 discharged these people for theft purposes.

12 MR. FANTON: This was, of course, one of our special
13 defenses to the motion for summary judgment.

14 Now, we are getting off into another box here.

15 MR. ZOLOT: This is the reason for my question.

16 MR. FANTON: I am objecting to it from the standpoint
17 of this witness' testimony.

18 These other witnesses have been called and are now
19 waiting to testify.

20 MR. ROSENBERG: General Counsel would object if they
21 are going into areas which have already been settled in the
22 8A5 summary judgment.

23 This is only for the purpose of assessing credibility
24 of those other witnesses only for that purpose.

25 MR. ZOLOT: That's all we are talking about.

1 MR. ROSENBERG: Then General Counsel has no objection.

2 MR. ZOLOT: That's my only function, going to the
3 credibility of witnesses that are going to follow.

4 MR. FANTON: I think it is proper to ask, either ask
5 them these questions or if he wants to make Mr. Salvati as
6 his own witness, he can do that, but it is not within the
7 scope of my examination of Mr. Salvati.

8 MR. ZOLOT: I am not sure if that's correct because he
9 was asked how many people were still employee by the company
10 who were originally in the election unit and he said two
11 and I think it is proper to ask why aren't the others still
12 there, but I wasn't asking that question, your Honor, I just
13 want the record to show what is admitted by the Respondent
14 in its pleadings.

15 If you want to stipulate to that, we can save some time.

16 JUDGE FRIEDMAN: All right, I will permit it for that
17 very limited purpose, but I am making this ruling and I am
18 emphasizing it right now, we will not go into the post
19 election discharges.

20 MR. ZOLOT: I am not offering it for that purpose.

21 I am only offering it to show the evidence with
22 respect to the credibility of these individuals based upon
23 the action this company took with respect to their employment.

24 MR. FANTON: If we do that, your Honor, then there are
25 other witnesses which we have not summoned who are out
there that were also discharged in connection with the same

proceeding which is part of our special defense in the C case.

So, I think it is very difficult to say the witnesses we called should be discredited and the others shouldn't because they are all in the same book.

There has been one of the problems with this case right along.

It is difficult enough, I mean, after two and a half years.

JUDGE FRIEDMAN: I realize that and I am taking that into consideration.

It has been a long time.

MR. ZOLOT: Well, the alternative is very simple, we'll ask you, if you will take judicial notice in the special defense case.

JUDGE FRIEDMAN: I would rather do that.

I don't want this field pursued at all.

MR. ZOLOT: Let me withdraw my question then, your Honor, and ask you to take judicial notice of the answers in special defense case number 2-CA-12796 on Page 2, Paragraph 1 and 2 of the special defense.

JUDGE FRIEDMAN: I will take judicial notice of that with respect to these two cases.

Q (By Mr. Zolot) What was the job of Mr. Cataldo at the time, June, 1972?

1 A He was a driver.

2 Q How long had he been a driver with the company?

3 A I don't know when I hired him.

4 Q Your best recollection?

5 A In June of 1972, maybe a year, maybe a year and a half.

6 Q And Mr. Atkins, what was his capacity?

7 A He was at that time more of a -- he was a combination
8 driver or driver's helper.

9 Q How long had he been employed by your company?

10 A He was part time with us, but he was going to high
11 school for a year or so and then when he got into college, --

12 MR. FANTON: Do you have any records before you that
13 will indicate this?

14 THE WITNESS: Yes, I might have something in here.

15 (Indicating.)

16 MR. FANTON: Is it permissible?

17 JUDGE FRIEDMAN: Please check your records.

18 (Whereupon, the witness confers.)

19 THE WITNESS: Well, this says from January 1972, and
20 he is in here in January '72, so I would say he would have to
21 be with us then 8 or 9 months.

22 MR. FANTON: This is Cataldo?

23 THE WITNESS: No, this is Atkins.

24 Q (By Mr. Zolot) Was he a college student at that time?

25 A Yes.

1 2 Do you know what courses he took in connection with this
2 college career?

3 A Atkins was I believe, I don't know specifically.

4 Q With respect to Carrick, you also indicated he was a
5 part time employee, is that correct?

6 A Yes, sir.

7 Q Was he a college student too?

8 A Yes.

9 Q What was his classification?

10 A Driver helper.

11 Q Well, did Cataldo tell you he was actually at the
12 meeting?

13 A Yes.

14 Q Did Atkins say he was at the meeting?

15 A Yes.

16 Q Did Garrick tell you he was at the meeting?

17 A Garrick I don't know. I don't remember that he
18 specifically told me he was at the meeting?

19 MR. ZOLOT: That's all I have.

20 JUDGE FRIEDMAN: Any redirect?

21 MR. FANTON: Yes.

22 REDIRECT EXAMINATION

23 Q (By Mr. Fanton) Mr. Salvati, the National Labor Relations
24 Board Agent who came to your office to question you and
25 others in relation to the objections which have been filed

1 by the company came at what time of the day, did he come on
2 the day of your statement which is June 26, 1972?

3 A Yes.

4 Q Well, what time of the day did he arrive at your office?

5 A I would say he got there about one o'clock, 12:30,

6 1:00 o'clock, during that time, maybe 1:30.

7 JUDGE FRIEDMAN: P.M.?

8 THE WITNESS: Yes.

9 Q (By Mr. Fanton) This was after lunch presumably?

10 Had he had his lunch, do you recall?

11 A I think it was after lunch, yes.

12 Q How did he proceed in his investigation?

13 MR. ROSENBERG: Objection, there is no need to go into
14 the method of how a Board Agent obtains an affidavit.

15 JUDGE FRIEDMAN: I am going to overrule your objection.

16 I think I know what counsel is going to.

17 Go ahead.

18 THE WITNESS: Of course introductions were made and he
19 asked where there was a suitable spot that he could go to
20 and talk to these men, and we have a downstairs storage
21 area and we have some small rooms down there also and we
22 showed him one of the rooms and this is where he conducted
23 interviews.

24 Q (by Mr. Fanton) How long was he engaged in conducting
25 these interviews?

1 MR. ROSENBERG: Your Honor, this is taking ten steps
2 to make one.

3 MR. FANTON: This relates to the statement, particularly
4 this statement that is in evidence and taking of the statement
5 and how much time was spent.

6 MR. ROSENBERG: What they did is irrelevant.

7 MR. FANTON: All are related. If he saw ten people in
8 two hours, it is obvious he didn't spend much time with anyone.

9 JUDGE FRIEDMAN: I will overrule your objection.

10 Go ahead.

11 Q (By Mr. Fanton) Answer the question.

12 A He left at about I would say 4:30.

13 Q How many employees did he see in that period of time?

14 A Well, I can't say exactly how many, you mean, after he
15 spoke to me?

16 Q Did he take your statement first?

17 A Yes, I believe I was one of the first he took.

18 Q Now, just confining ourselves to your statement now,
19 how was this taken, is this your handwriting?

20 A No.

21 Q Whose handwriting is it, if you know?

22 A It would have to be his.

23 Q How did he proceed in taking this statement, to the
24 best of your recollection?

25 A We went downstairs into this room, we sat down by the

1 table and he asked me what took place, what lead up to this
2 calling him in, then I related this information to him.

3 He wrote all of this down while I was speaking to him.

4 Q Did he ask you questions as you went along?

5 A No, I don't believe there were any questions asked.

6 It was just my statement.

7 Q Did he leave anything with you?

8 Now, this is broken down and I don't know whether you
9 have it in front of you.

10 This is broken down into number paragraphs.

11 Did he go over them you as he wrote them down?

12 A Each paragraph?

13 Not that I remember. It was just a general statment
14 of what took place.

15 Q Did he take down to your recollection at this point
16 in time every word that you stated when you talked with him?

17 Did he record every word?

18 A I would have to say --

19 Q Do you recall?

20 A No, I don't recall if every word was taken down.

21 Q How long did you spend with him, approximately?

22 A Approximately 15, 20 minutes, about that.

23 Q Was that time consumed in writing this out by him?

24 A Yes.

25 Q You talked?

1 A Yes.

2 Q He asked you no questions that you can recall?

3 A Not that I can recall.

4 Q Other than the one you have mentioned, the introductory
5 question as to what happened, how he happened to be called?

6 A Yes, that's right.

7 Q Now, when he got through writing, what happened?

8 A He handed me the paper, asked me to read it, then if
9 there was -- if it was correct to the best of my recollection
10 and I am sure I put my initials on the bottom of each page,
11 and I signed the last page.

12 Q You signed the last page?

13 A Right.

14 Q Now, what procedure was followed in questioning the
15 other employees, other employees after he got through with
16 you?

17 MR. ZOLOT: If he knows.

18 THE WITNESS: The only thing I know is that they were asked
19 one at a time to go and see him.

20 Q (By Mr. Fanton) Who got them for him, he just didn't
21 go out in the yard and get them, himself, did he?

22 A I don't remember who got them, I know he didn't go out
23 and get them himself.

24 I don't know who went out and got the employees in, I
25 don't remember, I mean, this was a day of business. This was

1 during working hours and after he had finished with me
2 I had other business that I had to conduct.

3 Q Did he also interview Mr. Henderson, to your knowledge?

4 A Yes.

5 Q Before or after you?

6 A I think Mr. Henderson was first and I was second,
7 if I remember correctly.

8 MR. FANTON: I have no further questions.

9 MR. ROSENBERG: I have a couple of questions with
10 respect to the taking of the affidavit.

11 Q (By Mr. Rosenberg) I want to make sure that the
12 record is complete with respect to Board procedures.

13 Mr. Salvati, on the bottom of Page 3 of the affidavit,
14 Paragraph number 15, going over to the top of the next
15 page it says:

16 "I have read the above statement consisting of this
17 and three other pages and it is true to the best of my
18 knowledge and belief."

19 That is the signature, is it not?

20 A Yes.

21 Q This is your initial on the bottom of that page?

22 A Yes.

23 (Indicating.)

24 Q And Mr. Chalet's name appears there where it says,
25 "signed and sworn to before me this 26th day of June, 1972",

1 is that correct?

2 A Yes.

3 Q Now, back on Page 3 there are corrections, the word
4 colaborate was misspelled.

5 There is an asterick and your initials appear on the
6 bottom of the page.

7 On Page 2, likewise the word million is inserted.

8 There is a turret and million scribbled in above
9 and the word million is in your handwriting, is it not?

10 A Yes.

11 Q Okay.

12 So, in order to put that there, you read the
13 statement after Mr. Chalet had taken it down, and you made
14 the correct with respect to million on there.

15 You also initialed the bottom of that page, is
16 that correct?

17 A Right.

18 Q This is Mr. Chalet's handwriting, I notice there are
19 no initials there.

20 After having gone through it and made the corrections
21 on it, you then signed it under oath indicating that it
22 was true, is that correct?

23 A Yes.

24 MR. ROSENBERG: No further questions.

25 MR. ZOLOT: May I ask a few questions?

1 JUDGE FRIEDMAN: Surely.

2 RECROSS EXAMINATION

3 Q (By Mr. Zolot) Are you testifying that the Board
4 Agent just asked you what happened and then took four
5 pages without asking you a question?

6 A I don't remember any specific questions that he asked.

7 Q Did he ask you questions?

8 A I don't remember any questions that he asked me, no.

9 Q Are you saying then that all the information contained
10 on your affidavit which is Charging Party's Exhibit 1 just
11 flowed out of you without any questions being asked?

12 A Yes.

13 He asked me to relate to him the events that took
14 place and I proceed to give him this information.

15 Q In the same order as he has?

16 A Yes.

17 Q The second question that I have relates to the
18 house.

19 At the time of the election, were you building a
20 house?

21 A It was completed by then.

22 Q In the two or three months prior?

23 A Yes I did build a home in 1971 going into '72 and
24 moved in it in early June, I guess, or late May, '72.

25 Q Was it a large house?

1 A Yes, oh, yes

2 Q What would you say it's market value was?

3 A About \$70,000.

4 MR. ZOLOT: Thank you.

5 RECROSS EXAMINATION

6 Q (By Mr. Rosenberg) You say that Mr. Chalet asked
7 you to say what happened, yet if you notice Paragraph 1
8 it gives your address and phone number.

9 Did you say my name is Fred Salavit, I live at
10 so and so or did Mr. Chalet say what is your name, where do
11 you live, what's your phone number what's your position
12 with Henderson how long have you been with them, et cetera?

13 A I would have to assume he asked.

14 Q I am sure he didn't know how to spell Cataldo and
15 asked you for the spelling.

16 A Yes.

17 Q So, there was a flow of conversation back and forth
18 between you and Mr. Chalet while you were relating the
19 story?

20 A In something of that nature, I would say yes.

21 MR. ROSENBERG: No further questions.

22 MR. FANTON: I have no further questions.

23 JUDGE FRIEDMAN: You may step down, sir.

24 (Witness excused)
25

1 JUDGE FRIEDMAN: We will take a short recess.

2 (Whereupon, a recess was taken.)

3 JUDGE FRIEDMAN: Back on the record.

4 You may proceed please.

5 MR. FANTON: I would like to call Mr. Gerry Cataldo
6 to the stand.

7 Whereupon,

8 GERALD CATALDO

9 called as a witness, having been first duly sworn in by
10 Judge Friedman, was examined and testified as follows:

11 JUDGE FRIEDMAN: Please state your name and address
12 for the record.

13 THE WITNESS: Gerald Cataldo, 120 Huntington Turnpike,
14 Bridgeport, Connecticut.

15 JUDGE FRIEDMAN: You may proceed, please.

16 DIRECT EXAMINATION

17 Q (By Mr. Fanton) Mr. Cataldo, on or about June
18 12, 1972, were you employed by Henderson Trumbull Supply
19 Corporation?

20 A Yes.

21 Q How long had you been employed by the company at
22 that time?

23 A Two years. two and a half years

24 Q What was your job with the company?

25 A Driver.

1 Q You were a driver?

2 A Yes.

3 Q Did you vote in the union election that was held
4 in this case on June 14, 1972?

5 A Yes, I did.

6 Q You were one of the ones voting?

7 A Yes.

8 Q Did you attend a meeting held at the union offices
9 on the evening of June 12, 1972?

10 A Yes.

11 Q How many employees were at that meeting?

12 A Eight.

13 Q There were eight employees present?

14 A Yes.

15 Q When was it held, what time of day?

16 A Six, 6:30.

17 Q About six in the evening?

18 A Yes.

19 Q Was this after work?

20 A Yes.

21 Q Where is the union office located?

22 A Fairfield Avenue.

23 Q And can you describe the room in which the meeting was
24 held?

25 A I forgot what floor it was, maybe on the 2nd floor.

1 Q Was it a large room?

2 A Fairly decent room.

3 Q Can you tell us anything else about it?

4 A No.

5 Q Was it well decorated, paneled?

6 A It was nice.

7 Q Was there a big table like this table we are all
8 sitting at?

9 MR. ZOLOT: Are you testifying?

10 MR. FANTON: No, I am asking him a question.

11 THE WITNESS: Not as long, I guess.

12 Q (By Mr. Fanton) Was there a table?

13 A Yes, there was

14 Q Since Mr. Zolot wants to proceed that way can you
15 describe it for us?

16 A Ten feet.

17 Q At this meeting, tell us just what occurred.

18 Did you all go over there together to start with?

19 A Yes.

20 Q And these were all employees of Henderson Trumbull
21 Supply?

22 A Yes.

23 Q Were they all men who voted in the election on
24 June 14th?

25 A Yes.

1 Q I am speaking, of course, of the union election.
2 Did you all arrive there at about the same time,
3 at the Union office?

4 A We met there.

5 Q You met. then where did you meet?

6 A Outside.

7 Q You mean outside on the street?

8 A Right -- well, in the parking lot.

9 Q Then what happened?

10 A Then we went upstairs.

11 Q You went upstairs to the union office?

12 A Right.

13 Q Who did you meet at the union office?

14 A Tony Rossetti.

15 Q He is the gentleman sitting here at the counsel
16 table?

17 (Indicating.)

18 A Right.

19 Q In the middle next to Mr. Zolot?

20 A Yes, right.

21 Q Was he there when you arrived, was he there when
22 this group of eight of you arrived?

23 A He didn't meet us outside.

24 Q He did not meet you outside?
25

1 A No.

2 Q Was he in the office when you reached the office?

3 A Yes.

4 Q He was there?

5 A Yes.

6 Q Can you describe for us what took place, what was
7 said?

8 Just what took place as near as you can recall?

9 A You know, we wanted a union, more money, benefits,
10 that's it.

11 Q Can you tell us a little more, you were expressing
12 what you wanted more money, benefits?

13 A Right.

14 Q Then who spoke?

15 Can you recall who said what at this time, I am
16 speaking now of the time of this meeting?

17 A No.

18 Q Can you recall what Mr. Rossetti said?

19 A Well, he was telling us about another company that
20 they made out real good

21 Q What did he say about Henderson Trumbull, your
22 company, the company you worked for?

23 A I can't, you know, remember. It was two years ago.

24 Q You can't remember at this point what was said?

25 A (No response.)

1 Q You did give a statement, did you not, to the
2 National Labor Relations Board examiner?

3 A Yes.

4 Q Who investigated the objection?

5 A Right.

6 Q May I see a copy of that statement?

7 MR. ROSENBERG: Let me go out and get a copy of
8 that.

9 (Whereupon, Mr. Rosenberg hands document to Mr.
10 Fanton.)

11 Q (By Mr. Fanton) Mr. Cataldo, we recognize that
12 there has been some period of time that elapsed since
13 the events that I am asking you about took place, but
14 is there anything further that you can tell us now
15 particularly about what Mr. Rossetti said?

16 A Well, you know, he said the yard that he had he
17 could use a union.

18 JUDGE FRIEDMAN: Excuse me?

19 THE WITNESS: For a yard like he had, the business
20 that he was doing, he could use a union.

21 Q (By Mr. Fanton) What about the business that he
22 was doing, he was talking about Mr. Slavati?

23 A Right.

24 Q What did he say about the business the company was
25 doing?

1 Did he mention some figures?

2 A He was doing--

3 Q Pardon?

4 A He was doing good.

5 Q What did Mr. Rossetti say?

6 A I can't, you know, reca'll too much.

7 Q You can't recall now?

8 A No.

9 Q Let me show you this statement, Mr. Rosenberg has
10 made available.

11 I ask you first if that's your signature at the
12 end of it?

13 A Right.

14 Q I ask you to take a minute and read this?

15 (Whereupon, witness complies.)

16 A Okay.

17 Q Do you recall giving that statement to Mr Chalet?

18 A I don't think it was that much money though.

19 Q Do you recall giving this statement to Mr. Chalet,
20 the Board Agent?

21 A Yes

22 Q How was that statement given?

23 A What do you mean?

24 Q You talked to him and he wrote this down?

25 A Yes.

1 Q This is not your handwriting, I take it from your
2 signature?

3 A That's correct.

4 Q Then you read it over, after he finished, is that
5 correct?

6 A Right.

7 Q And these are you initials here in the corner?

8 A Yes.

9 Q Then this concluded with "I have read the above
10 statement consisting of two pages and it is true to the best
11 of my knowledge and belief" and then you signed it?

12 A Right.

13 Q Is that correct?

14 A Right.

15 Q That was the way it was taken, you read the statement
16 at the time, did you not?

17 A Right.

18 Q Now, does this statement which you signed two and a
19 half years ago refresh your recollection as to what you
20 said at that time to Mr. Chalet?

21 A Yes.

22 Q Does this represent the truth of what happened at
23 that meeting of January 12th?

24 A Yes, except the money part.
25

1 Q What about the money part?

2 A 1.3 million.

3 Q Yes?

4 A That's a lot.

5 Q Well, it's a lot granted, but the question is
6 was it said and it appears here that it was said.

7 A Yes.

8 MR. ROSENBERG: I am going to object because he is
9 impeaching this witness with testimony that isn't even in
10 yet.

11 JUDGE FRIEDMAN: You are asking him if that refreshes
12 his recollection and ask him what his recollection is and
13 that's the proper way to do it.

14 MR. ROSENBERG: Without the document in his hand.

15 JUDGE FRIEDMAN: Well, ask him.

16 I want the record to show that he was not showing,
17 counsel was not showing him the affidavit as he was
18 asking the witness the questions.

19 MR. FANTON: I would like to introduce this document,
20 your Honor.

21 MR. ROSENBERG: Objection.

22 MR. FANTON: This is a contemporaneous statement
23 taken by the Board Agent.

24 MR. ROSENBERG: Objection.

25 Before you get to that I would like to voice my

1 objection now because we have yet to show that the
2 witness has exhausted his recollection and he has not
3 proven that this is an accurate recollection at the time
4 that he had a recollection.

5 Q (By Mr. Fanton) Have I exhausted your recollection
6 as you sit here today, thinking back as to what happened
7 at that meeting?

8 A That was like two and a half years ago.

9 Q I realize that. I fully appreciate the difficulties
10 of your experience here today, but I have to ask the
11 question.

12 Is there anything else that you remember about that
13 meeting that you can recall?

14 A No. Not really.

15 Q Does this document that you have here refresh your
16 recollection as to what occurred?

17 A Yes.

18 Q And what is in here, is that correct, as you sit
19 here today?

20 (Indicating.)

21 A Yes, except for the money.

22 Q You say that's a lot of money?

23 A Yes.

24 I know he's not making that.

25 Q You know that they are not making that?

1 A Maybe about 3 or \$400,000 or so.

2 JUDGE FRIEDMAN: Hold it.

3 MR. ROSENBERG: I am going to object to that.

4 JUDGE FRIEDMAN: Do you recall, does this refresh
5 your recollection as to what you told the Field Examiner
6 on that day?

7 THE WITNESS: Yes.

8 JUDGE FRIEDMAN: It does?

9 THE WITNESS: Yes.

10 JUDGE FRIEDMAN: What did you tell him?

11 THE WITNESS: Just what I told him.

12 JUDGE FRIEDMAN: Repeat what you told him.

13 THE WITNESS: That, you know, we visited -- say it?

14 JUDGE FRIEDMAN: Yes.

15 THE WITNESS: That we were getting the shaft and --

16 JUDGE FRIEDMAN: What did Mr. Rossetti say on that
17 day if anything?

18 Can you now recall after having read that paper
19 what Mr. Rossetti said?

20 THE WITNESS: Just what's there.

21 JUDGE FRIEDMAN: Well, repeat it.

22 THE WITNESS: Like, you know what Freddy was making
23 a year, 1.3 million, that's --

24 JUDGE FRIEDMAN: Is this what he told you to the
25 best of your recollection?

1 Is this what you were told?

2 THE WITNESS: No. I don't think I heard that, not
3 that much.

4 JUDGE FRIEDMAN: You don't think you heard that?

5 THE WITNESS: Not that much.

6 Q (By Mr. Fanton) Well, that's what you think here,
7 is that correct?

8 A Correct.

9 Q Yes, on June 26, 1972 you signed this statement and
10 swore to the truth of it. Isn't that correct?

11 MR. ROSENBERG: He is still impeaching right now and
12 he doesn't have anything in evidence yet.

13 MR. FANTON: I don't know what more you want in
14 evidence.

15 He has been testifying here for ten to fifteen
16 minutes.

17 MR. ROSENBERG: He hasn't said anything.

18 MR. FANTON: He has been answering the Judge's
19 questions as well as mine.

20 JUDGE FRIEDMAN: He stated that he could recollect
21 his testimony to the effect that he could remember that
22 he read what he was told that day, but he says he was not
23 told it was 1.3 million.

24 MR. FANTON: This is what he is baffled about here
25 today.

1 That's what he says and that's why I am pressing
2 the point.

3 Now, to get back to the line of questioning I was
4 pursuing a minute ago.

5 Q (By Mr. Fanton) Maybe you have already answered
6 this question, but on the 26th day of June --

7 MR. ZOLOT: Excuse me, there was an objection and
8 there has been no ruling, your Honor.

9 Can we have a ruling?

10 MR. FANTON: I will offer it again for the obvious
11 purpose that a statement was made under oath contemporaneous
12 with the events in issue.

13 I am going to object strenuously.

14 MR. FANTON: This witness has testified to three
15 times the fact and if you want to read it back --

16 MR. ROSENBERG: Your Honor?

17 MR. FANTON: He testified that this was a correct
18 statement of what he said to the Examiner at the time he gave
19 it. MR. ROSENBERG: He still didn't say he had any memory
20 at that time.

21 I think you can clear it up with a few more questions
22 and then I would have no objection.

23 MR. FANTON: I don't understand your objection.

24 I would be glad to ask the questions to meet the
25 objection.

1 JUDGE FRIEDMAN: I don't quite either.

2 MR. FINKEL: I don't understand why you are objecting
3 to it.

4 MR. ROSENBERG: Maybe I can clear it up with a
5 couple of questions and then I will have no objection.

6 JUDGE FRIEDMAN: You have a right to Voir Dire.

7 VOIR DIRE EXAMINATION

8 Q (By Mr. Rosenberg) You read this over.

9 (Indicating.)

10 A Yes.

11 Q After reading this over, if I take the paper away
12 from you, do you remember what went on at that meeting?

13 Can you tell us what went on at that meeting, what
14 Mr. Salvati said about what the company made, the amount
15 of money?

16 JUDGE FRIEDMAN: We have asked him that.

17 Q (By Mr. Rosenberg) Can you tell us that now?

18 A Mr. Salvati was doing real good. He has a good
19 business going, you know, with all the money they are
20 making they should give us a little bit more money.

21 Q Can you recall if he said any dollar figure?

22 Did he say a dollar figure?

23 A Yes, he did.

24 Q Do you recall what that figure was?

25 A Not, but it was quite a bit.

1 Q You don't remember what the figure was?

2 A No

3 Q Now, you gave this statement to Mr. Chalet on June
4 26 1972, right?

5 A Right.

6 Q And the meeting was on the 12th or 13th of June, 1972?

7 A Right.

8 Q When you gave this to Mr. Chalet could you then
9 remember what was said at the meeting?

10 Did you then remember what was said at the meeting?

11 A Yes, then.

12 Q This was based on your memory as to what was said?

13 A Excuse me, I can't remember 1.3 million.

14 MR. FANTON: You can't now but, that's not what
15 Mr. Rosenberg is asking you.

16 Q (By Mr. Rosenberg) When you gave this statement to
17 Mr. Chalet, the facts were fresh in your memory?

18 A Yes.

19 MR. ROSENBERG: I have no objection.

20 JUDGE FRIEDMAN: Mr. Zolot, do you have any objection?

21 MR. ZOLOT: No.

22 JUDGE FRIEDMAN: All right it is received.

23 The affidavit of Gerald Cataldo is received as
24 Respondent's Exhibit 4.
25

1 (Whereupon above referred to document was
2 received and marked Respondent's Exhibit 4 in
3 evidence of this date.)

4 MR. ZOLOT: With respect to the Exhibit, I think we
5 should clarify the record. If counsel would indicate the
6 purpose for which it is being offered.

7 It is not clear in my own mind for what purpose it is
8 being offered.

9 MR. FANTON: In view of the testimony as best evidence
10 what was his recollection at the time of the events in
11 question as given to an agent of the Board.

12 JUDGE FRIEDMAN: Past recollection?

13 MR. FANTON: Past recollection and recorded.

14 JUDGE FRIEDMAN: That's the purpose of it.

15 That's what I took it to be.

16 Q. (By Mr. Fanton) Mr. Cataldo one final question.
17 did you come down to Mr. Baldwin's office. he is my partner
18 sitting here at my right?

19 (Indicating.)

20 A Yes.

21 Q With Mr. Salvati?

22 A Yes.

23 Q Is that correct?

24 A Yes.

25 Q You told Mr. Baldwin the same thing -- you gave him
the same information as you had given Mr. Salvati previously

1 regarding this incident?

2 MR. ZOLOT: Objection, he appears to have no independent
3 recollection of what was said.

4 MR. FANTON: He may have a recollection of that, that
5 he was telling the same story to both of these gentlemen.

6 MR. ZOLOT: It's a conclusion that it was a same
7 story.

8 JUDGE FRIEDMAN: Sustained

9 Q (By Mr. Fanton) You had given an account of the
10 evidence that took place of this meeting and they are
11 covered in Respondent's Exhibit 4, that's your affidavit,
12 to Mr. Salvati previously, hadn't you?

13 A Yes.

14 Q Then subsequently how much later did you go with him
15 to Mr. Baldwin's office?

16 A A week or two.

17 Q Do you recall going?

18 A Yes.

19 Q Did you repeat the accounts that you had given Mr.
20 Salvati to Mr. Baldwin?

21 A Yes, right.

22 What I had said there I told Freddy.

23 MR. FANTON: I have no further questions.

24 JUDGE FRIEDMAN: Mr. Zolot.

CROSS EXAMINATION

Q (By Mr. Tolot) Mr. Cataldo, first, is the statement contained in your affidavit that, "sometime around the end of last week, around June 22, 1972, Salvati approached me and told me that he needed three guys to say that the union sort of forced us to vote for it. This was not the case. I voted for the union because I wanted it even before Rensetti made the statement about the money"?

A Right.

Q Is that right?

A Right.

Q That's a correct statement?

A Right.

Q It is still your best recollection at this time?

A Right, right.

Q And this was on the 22nd of June, not the 15th or the 16th of June?

A I don't recall the date.

Q Now, secondly, you testified that you went to a meeting on Monday, June 12, 1972 which lasted about 15 minutes. Is that still your recollection that it only lasted 15 minutes?

A I can't really say.

Q Do you recall whether or not on that day the company had a meeting of employees?

1 A Yes.

2 Q You do?

3 A Yes.

4 Q Do you know who conducted the meeting for the company?

5 A Mr. Salvati.

6 Q Do you recall what he said about the company, its
7 attitude towards the union?

8 A Well, he told us, you know, that he was fair to us.

9 Q Do you recall anything else?

10 A Not really, no.

11 Q Did he say anything about whether he could afford
12 a union or not?

13 A He said that if he could he would have.

14 Q Now, do you recall anything else at that meeting
15 which Mr. Salvati was present?

16 A No.

17 Q How many people were present at that meeting?

18 A Quite a few.

19 Q Did all of the people present at that meeting conducted
20 by Mr. Salvati go to the union meeting?

21 A No.

22 Q Now, at the union office at which you say you were
23 in attendance do you recall whether or not Mr. Rossetti
24 said that the union could not guarantee you anything that
25 it would have to be negotiated with the Employer?

1 A I can't recall.

2 Q Do you recall anything that he said about the
3 National Labor Relations Board's jurisdiction?

4 Did he use that phrase?

5 Do you have any recollection of him using that
6 phrase?

7 A No, not really.

8 Q Your recollection then at the time you gave this
9 statement to the Examiner was that he said the company
10 made 1.3 million dollars last year.

11 Now, are you saying that is not your present
12 recollection?

13 A No, I don't think so.

14 Q You don't recall?

15 A I don't recall that no.

16 Q Let me ask you this:

17 When you made this statement to the Board Agent,
18 did you make it -- withdraw that.

19 Who brought you before the Board Agent?

20 A Mr. Salvati.

21 Q How did he bring you before the agent?

22 A I was out in the yard and he approached me.

23 Q What did he say to you?

24 A I can't recall, you know, I have to go down to the
25 basement

1 Q When you went down the basement, did you meet
2 somebody there?

3 A Yes.

4 Q Do you recall who he was?

5 A I forget who it was.

6 Q Before you went down there did Mr. Salvati say to
7 you, you have to tell him the same thing you told our
8 lawyer or words to that effect?

9 A No.

10 Q Did he tell you why you had to go to the basement?

11 A I knew what it was for.

12 Q What was your understanding?

13 A It was all about the union.

14 Q Did you understand he was supposed -- what did you
15 understand you were supposed to do when you went down to
16 see this man?

17 A Tell him everything that I heard.

18 Q Tell him everything that you had heard?

19 A Yes.

20 Q And you told him that notwithstanding anything you
21 heard at that meeting, you were going to vote for the
22 union?

23 A Yes.

24 Q Before the meeting occurred and after the union
25 meeting?

1 A Right

2 Q Am I correct in my understanding that whatever Mr.
3 Rossetti said at that meeting no way changed your
4 position with respect to the Union?

5 A Right.

6 MR. FANTON: Thank you very much. I have nothing
7 further.

8 JUDGE FRIEDMAN: Anything else?

9 MR. ZOLOT: Nothing.

10 JUDGE FRIEDMAN: You may step down Sir.

11 (Witness excused.)

12 MR. FANTON: Would Mr. Peter Carrick take the stand,
13 please.

14 Microphone

15 PETER CARRICK

16 called on a witness, having been first duly sworn in by
17 Judge Friedman, was examined and testified as follows:

18 JUDGE FRIEDMAN: Please be seated and state your
19 name and address to the Reporter.

20 THE WITNESS: Peter Carrick, 5596 Main Street,
21 Trumbull Connecticut.

22 JUDGE FRIEDMAN: Would you proceed, Mr. Fanton.

23 DIRECT EXAMINATION

24 Q. (By Mr. Fanton) Mr. Carrick, on or about June
25 1972, were you an employee of the Respondent here,

1 Henderson Trumbull Supply Corporation

2 A Yes. I was.

3 Q What was your job at that time?

4 A Truck driver.

5 Q Did you vote in the election that is an issue in this
6 case that was held on June 14, 1972?

7 A Yes. I did.

8 Q Referring to the date June 12, which was two days
9 before the election, did you attend with other employees
10 of Henderson Trumbull a meeting at the union office?

11 A Yes. I did.

12 Q What time did that meeting occur?

13 A Well I think we went down right after work.

14 Q How many were at that meeting?

15 How many people?

16 A I think seven or eight.

17 Q Now, were these all employees of Henderson Trumbull?

18 A Yes, they were.

19 Q Did they all vote in the election that was held on
20 June 14, 1972?

21 A I'm not sure.

22 Q What jobs did these employees have that attended
23 the Union meeting?

24 A Well they were truck drivers two yard men I guess.
25

1 Q Any others?

2 A Just the people that worked there.

3 Q They were the people that worked there?

4 A Yes, they were all people that worked at Henderson.

5 Q Now, can you describe just what occurred at the
6 meeting?

7 Where was the meeting held, was it in the union
8 office?

9 A Yes.

10 Q Where was -- where abouts in the union office?

11 A It was isn't -- it was on Fairfield Avenue wherever
12 the building was.

13 It was held at the union hall, I guess.

14 Q Was it a large office, a room that you met in?

15 A No, I don't know it was about the size of the
16 stand up here, I guess with a table.

17 (indicating.)

18 Q Did you all sit at a table?

19 A Yes.

20 Q How large was the table approximately?

21 A Well it sat the eight of us.

22 Q Were there any chairs left over, any space left
23 over?

24 A I don't remember.

1 Q Was Mr. Rossetti there when you arrived at the
2 meeting?

3 A I don't know if he was there when we arrived.
4 He came in when we were inside the meeting.

5 Q Did he have anything with him when he came in?

6 A Yes, he had a briefcase.

7 Q Did he open the briefcase during the meeting?

8 A Yes.

9 Q Was he referring to papers in the briefcase --

10 A I don't know.

11 Q (Continuing) -- while the meeting was in progress?

12 A I don't know.

13 Q Can you describe for us just what took place at the
14 meeting?

15 What was said and by whom?

16 MR. ZOLOT: Excuse me, the witness has in front of
17 him which he is obviously using to refresh his recollection.

18 MR. FANTON: I'm sorry, I didn't realize he had
19 the statement there.

20 JUDGE FRIEDMAN: I am sure none of us did.

21 THE WITNESS: Well, the statement says it pretty
22 clearly as far as I remember.

23 JUDGE FRIEDMAN: Can you remember without the
24 statement?

25

111a

THE WITNESS: Oh, yes.

JUDGE FRIEDMAN: Go ahead.

THE WITNESS: Well, it was just like the usual meeting. We were discussing what was going to happen, if we were going to get more money and everything else, that was the big issue, wages as in any situation and with the election coming up, I guess in a couple of days or so, we started proceeding and asking how much wages we were going to receive, and how much in addition and it was told to us that we would probably get, you know, an increase.

Then we all wondered how much and stuff like that and then it was said something about Henderson made a million dollars.

Q (By Mr. Fenton) Who said this?

A Mr. Rossetti.

Q He made that statement?

A Yes.

Q So you should get paid more?

A So this would be a basis for us to get more salary.

Q What was your reaction to that statement?

A Well, I guess we were a little overjoyed, you know.

MR. ZOLOT: I object, to I guess.

JUDGE FRIEDMAN: Sustained.

Q (By Mr. Fenton) Well, describe it.

How would you describe it, use your words.

1 MR. SOLOV: He can't describe anybody else's --

2 JUDGE FRIEDMAN: I think the original question was
3 what was your reaction.

4 Q (By Mr. Fanton) I was talking about your personal
5 reaction to the hearing of this?

6 A My personal reaction was that at first I was shocked
7 that they had made that much money and I couldn't see
8 any reason why we shouldn't get any more money for ourselves,
9 if they are making that much.

10 Q Now, there has to be something that you saw, an angry
11 reaction or something, I don't care what, but do you
12 recall any reaction on the part of other employees that
13 were there?

14 A Just talking among themselves.

15 Q Along what lines?

16 A About how much more money we were going to get.

17 Q That was the chief topic of conversation as you
18 recall it?

19 A As I recall it, yes, sir.

20 Q What did Mr. Rossetti say specifically from the
21 standpoint of the amount of money being made by the
22 company?

23 A So, he said that the company made a million dollars
24 and why couldn't they pay us more.

25 Q Can you describe for us in any other terms other

1 than what you have already given us as to the effect of
2 this statement on the employees who were there, were you at
3 that meeting?

4 MR. SOLOF: I object.

5 MR. FANTON: If he can answer it.

6 JUDGE FRIDMAN: The effect is one thing, what did
7 they say would be all right, but to the effect --

8 MR. FANTON: Well, that's what I am asking.

9 It could be what they said, whether it was an angry
10 reaction or what.

11 THE WITNESS: I can't remember anything they said
12 except for the fact that they were glad to get some more
13 work.

14 MR. SOLOF: I say that that answer be stricken as
15 not responsive to the question.

16 JUDGE FRIDMAN: Overruled.

17 Q (By Mr. Fanton) May I see the statement, please?

18 (Handing to Mr. Fanton)

19 Do you remember some mention of Mr. Salvati's house
20 at that meeting?

21 A I remember it was mentioned in the discussion.

22 Q Do you recall now who brought the subject up?

23 A No, I don't recall who it was.

24 Q I am showing you this statement Mr. Garrick.

25 Have you read that statement?

1 A Yes, I have.

2 Q What?

3 A Right.

4 Q Do you recognize this as your signature at the end
5 of the statement?

6 I'm sorry, this is not a signed statement.

7 Were you asked to sign this statement?

8 MR. ROSENBERG: This one is (indicating) as then
9 there is a supplementary page that was put on to it and
10 it was not signed, but the basic statement was signed.

11 Q (By Mr. Fanton) Can you find the signature on
12 here?

13 A I don't see a signature.

14 MR. ROSENBERG: I think that we will have to say
15 that this was adopted since it is not signed.

16 It was signed by Clifford Chalet, the examiner.

17 There is no signature of Mr. Garrick, but I think
18 if you establish that he adopted it, we will have no
19 problem.

20 JUDGE FRIEDMAN: I can't admit it.

21 Q (By Mr. Fanton) Let me ask you this:

22 How was that statement taken?

23 A You mean in what manner?

24 Q Yes.

25 A They just -- I was asked a series of questions if I

1 recall and that's it.

2 Q Was it written out in your presence?

3 A I don't know.

4 I really couldn't say. There were notes taken and
5 stuff.

6 Q Do you recall the time of day at which you gave your
7 statement?

8 A Afternoon.

9 Q How late in the afternoon?

10 A I couldn't really know.

11 All I know is that it was after lunch.

12 Q You don't remember how late it was after lunch?

13 A No.

14 Q Do you know whether anyone followed you in giving
15 a statement to Mr. Chalet?

16 A No, I don't.

17 Q You don't know?

18 A No, I don't know.

19 Q Then there is a supplementary statement here.

20 Have you read that identifying who was at the meeting?

21 A Yes, I have.

22 Q That was apparently given to Mr. Chalet on July 10,
23 1972 according to the statement made there.

24 Do you recall that, do you recall giving him a
25 supplementary statement?

1 A I really don't recall it.

2 Q Did you talk with him on the phone?

3 A Not that I remember.

4 Q You don't recall seeing him more than this one time?

5 A No, that's all I remember. The one time that we
6 were talking.

7 Q Now, let me ask you this:

8 The last paragraph of this statement that I have
9 been questioning you reads:

10 "I have read the above statement consisting of two
11 pages and it is true to the best of my knowledge and
12 belief."

13 Now, as you sit here today and you read this state-
14 ment, does this refresh your recollection as to the statement
15 you gave Mr. Chalet on this day which is June 26, 1972?

16 A As far as I can remember it does.

17 I really don't remember. It was two and a half
18 years ago.

19 I don't remember everything that was said.

20 Some points that I read there I remember saying to
21 him.

22 Q What points do you remember saying to him?

23 A Well, I remember like I said, well, the whole standard
24 procedure and stuff where I worked, where I lived and that,
25 that that's all true and what I told you in the first place.

1 the wages and stuff like that, like we might get more
2 stuff.

3 Q Is there anything in there that you don't recall telling
4 Mr. Chalet, anything in that statement?

5 A Not really, because everything there is just about
6 the way it was as far as I could see.

7 Q That was the way it was?

8 A It was procedures and stuff, the way we did it,
9 you know.

10 MR. FANTON: I have no further questions of this
11 witness.

12 MR. ROSENBERG: Not having looked at the back page,
13 I did not realize that it did not have qualified clearly
14 as a Jencks statement and we did let counsel for
15 Respondent look at it.

16 I think we have the application in this case to
17 release the document for use to Mr. Zolot.

18 JUDGE FRIDMAN: Yes.

19 I also recall just as a matter of recollection that
20 upon reading the Court's record it said that some of the
21 statements were unsigned and some witnesses refused to
22 sign statements.

23 CROSS EXAMINATION

24 Q (By Mr. Zolot) Mr. Garrick, are you still employed
25 by this company?

1 A No, I am not.

2 Q When was your employment terminated?

3 A As I recall it was in July, the middle of July in
4 '72.

5 Q Was that a voluntary termination?

6 A No, it was not.

7 Q Now, you have been asked certain questions concerning
8 this statement.

9 Do I understand that this statement refreshes
10 your recollection as to your thinking in June 1972?

11 A Yes, I would say it was pretty close to it.

12 Q Now, specifically in paragraph five of the statement
13 it says during the meeting Consatti said something about
14 the company making a million dollars last year and being
15 able to afford to pay us more.

16 I don't remember exactly what was said at that time,
17 nor do I remember what was said about Salvati's house.

18 I do not remember who brought up the subject of
19 Salvati's house during the conversation.

20 Q Was that your recollection in June of '72?

21 A Yes, I guess it was.

22 Q Is it your present recollection as to what happened
23 at that meeting?

24 A Could you read what it said again?

25 Q Why don't you read it yourself.

1 MR. BANTON: What are you asking him to read?

2 MR. BANTON: What I just read.

3 (Whereupon, witness complies.)

4 THE WITNESS: Yes, I think that says it pretty well.

5 Q (By Mr. DeLoe) In Paragraph 3 you said that was
6 about the extent of the meeting, nothing was said to make
7 me change my mind about how I was going to vote in the
8 election.

9 Was that your position in June, 1972?

10 A I had already made up my mind that was what I was
11 going to do.

12 Q Whatever was said at this meeting at the Union hall
13 wasn't going to change your mind, is that correct?

14 A That's right.

15 Q Specifically the fact that if there was a million
16 dollars mentioned that didn't change your mind one way or
17 the other?

18 A Not as far as me, myself, no.

19 Q Now, what I want to know is this, because I think
20 you also say in this statement about a week ago, which
21 would be sometime in -- a week ago Salvati approached me
22 and asked me to make a statement for the Government.

23 Do you recall that incident, being approached by Mr.
24 Salvati?

25 A The only thing that I recall is having someone come

1 up and take that statement.

2 I don't remember, you know, all the specifics of
3 how it came about.

4 Q I am asking you a different question.

5 Did Mr. Salvati come up to you and say I want
6 you to give a statement?

7 A I don't remember.

8 Q Did Mr. Salvati, on Monday after the election, on
9 the Monday after the election, ask you if there was any
10 sentiment about how much money the company made?

11 A There was some sort of a discussion between a few
12 of us.

13 Q That's not my question.

14 I am asking you, did Mr. Salvati on the Monday after
15 the election come up to you and ask you what was said
16 at the Union meeting about the company making money?

17 Do you recall him approaching you about that at
18 all on that day?

19 A Yes, I think he made a statement.

20 I couldn't tell you if it was directly, just mainly
21 at me.

22 Q Do you recall a statement?

23 A I remember there was a statement something about
24 the money.

1 Q Did you say anything about the money?

2 A I really don't recall.

3 Q Now, when he said he wanted you to talk to the
4 government man, did he tell you what kind of statement
5 you were to make?

6 A No, he didn't.

7 Q Now, you testified that this meeting lasted --
8 withdrew.

9 How long did the meeting last?

10 A I think it was roughly a half an hour.

11 Q Your supplemental statement says the meeting lasted
12 about one hour, does that refresh your recollection?

13 A All I know is that it was held after work and I was
14 out a substantial amount of time, because I wanted to get
15 home and eat, and stuff, you know.

16 Q Do you recall whether Joe Ballester was there at that
17 meeting?

18 A No, he wasn't there.

19 Q Was Cataldo there?

20 A Yes, he was.

21 Q Now, that same day, had there been a meeting held
22 by Mr. Salvati at the company office concerning the union?

23 A On the same day of the election?

24 Q The same day you went down to the union hall?

25 A Yes, I think that was the same day.

1 Q Did Mr. Salvati talk to you about the election?

2 A Things were discussed.

3 All of us were brought together to talk about the
4 whole situation.

5 I don't remember exactly.

6 Q there was talk?

7 A Yes, there was talk.

8 Q How long did that talk last, do you recall?

9 A Well, it was after work. I know that
10 I would say half an hour.

11 Q Would you say that the union meeting lasted as long
12 as the company meeting on that day?

13 A I would say yes, give or take a half an hour to
14 an hour. I really wouldn't know exactly.

15 Q Did Mr. Henderson also participate in that meeting?

16 A Yes, he did.

17 Q So you have Mr. Salvati, Mr. Henderson anybody else?

18 A The fellow employees.

19 Q Was there a discussion there?

20 Do you recall as to what the union could do for the
21 employees?

22 A I don't really remember.

23 Q Had you received two letters from the company
24 prior to the meeting at the Union hall about its position

1 with respect to the union?

2 A Yes. I remember receiving a letter. I don't know
3 about two.

4 Q Let me ask you two letters one dated June 5, '72
5 which is Charging Party Exhibit 2 and a letter dated
6 June 7, 1972 which is Charging Party Exhibit 3.

7 Do you recall receiving either or both of those
8 letters?

9 A Yes, I do.

10 Q In spite of having those letters, you had decided
11 before you went to the union meeting to vote for the union,
12 is that right?

13 MR. BANTON: He didn't say that.

14 THE WITNESS: A decision was made. I said.

15 Q (By Mr. Zolot) Had you made your mind up after
16 receiving those letters at a time after you received those
17 letters?

18 A I really couldn't say.

19 MR. ZOLOT: That's all I have, thank you, sir.

20 JUDGE FRIEDMAN: Any redirect?

21 MR. BANTON: Yes.

22 REDIRECT EXAMINATION

23 Q (By Mr. Banton) Mr. Garrick, were you asked to
24 sign a statement do you recall that?

25 A I really don't remember.

1 Q Do you recall refusing to sign a statement?

2 A I remember I didn't want to make up a statement,
3 so I would think that if I didn't want to make it up I
4 probably didn't want to sign it.

5 Q I am speaking now in relation -- maybe I should
6 have made this clearer to you, but in relation to your
7 talking to Mr. Chalet, the National Labor Relations Board
8 examiner, do you remember in that context of your
9 conversation with him being asked to sign a statement or
10 you refusing to sign a statement, either one?

11 A I don't really remember.

12 MR. FANTON: I have nothing further.

13 MR. ROSENBERG: Your Honor, before we break, maybe
14 just to expedite things we can clear things in view of
15 Mr. Salvati's testimony as to the value of his house,
16 maybe we can obviate going into that avenue of inquiry.

17 If we can stipulate that if there was a statement
18 made, it was in the neighborhood of 70 or \$75,000, it
19 wouldn't make it a misrepresentation, we can obviate going
20 into that area of inquiry.

21 MR. FANTON: The way the testimony has developed at
22 this point, we certainly couldn't agree that that's not
23 a factor in the case simply because it's the effect of
24 the statement in its relationship, how much money the
25 company was making, that's the impact.

1 It is not the question of whether it's worth 70,000
2 or 75,000 or 80,000.

3 JUDGE FRIEDMAN: It is a question of misrepresentation
4 and if Mr. Salvati in his own testimony admits that it
5 was \$70,000 or approximately worth \$70,000 at the time it
6 was built at that time, we don't know what it's worth
7 now.

8 MR. FANTON: I would be prepared to stipulate that
9 that's what it is.

10 JUDGE FRIEDMAN: If there was any misrepresentation,
11 I think that was it.

12 Now, are you arguing that that however had to be
13 taken into consideration in connection with the other
14 statement?

15 We will assume for the moment that Mr. Rossetti
16 said that the house was worth somewhere, just for the sake
17 of discussion, 70 to \$80,000, I think we can all agree
18 on that.

19 It wasn't that great a difference.

20 MR. FANTON: I would say this, as far as what the
21 house was worth on the date in question as I understood
22 Mr. Salvati's answer, he said about 70,000.

23 MR. SALVATI: May I say something here?

24 It was worth about 70,000.

25 JUDGE FRIEDMAN: No, you may not participate, you are

1 not a witness here.

2 MR. FANTON: Is that his testimony --

3 JUDGE FRIEDMAN: That's the way I recall it.

4 However, if you want to pursue it, I am not going
5 to stop you. I am just telling you what I think the Board
6 Law is.

7 MR. FANTON: There is no question about that.

8 I think we are prepared to concede that the house
9 was approximately worth \$70,000, but that is not where the
10 effect of this whole thing lies, whether it was 70, 80,
11 50, it's the fact that it was a large amount and in the
12 even of these men it was paid out of the -- the implication
13 was as the story came to us that it was being paid out of
14 these enormous profits.

15 JUDGE FRIEDMAN: I can see your point of view and I
16 said under those circumstances we are trying to eliminate
17 your testimony, that's all.

18 If you are going to pursue it in that direction, I
19 am not going to stop you.

20 MR. FANTON: That's my intention, sir.

21 JUDGE FRIEDMAN: Off the record.

22 (Discussion off the record.)

23 JUDGE FRIEDMAN: Back on the record.

24 You are excused

25 (Witness excused.)

JUDGE FRIEDMAN: Let's break for lunch at 1:15.

(Whereupon, a luncheon recess was taken at 1:15
o'clock P.M.)

AFTERNOON SESSION

JUDGE FRIEDMAN: Back on the record at 2:15.

Courtroom. if we are all ready, we can proceed.

MR. FANTON: Mr. Salvati, do you want to take the stand again.

Mr. Salvati.

FRED SALVATI.

recalled to the witness stand, having been previously duly sworn was examined and testified further as follows:

JUDGE FRIEDMAN: Mr. Salvati, let me remind you you are still under oath.

REDIRECT EXAMINATION

(By Mr. Fanton) Mr. Salvati, with reference to your new home which has been the subject of your testimony and that of other witnesses, what was the value of that home, approximate value in your opinion as of June, 1972?

A About \$70,000.

Q It was brand new, it had just been completed at that time?

A Yes.

Q Did you have a mortgage on that property?

A Yes.

Q What was the amount of that mortgage?

A \$30,000.

Q So that would give you an equity of approximately

1 \$10,000 on the property, is that correct?

2 A That's correct.

3 MR. FANTON: I have no further questions.

4 JUDGE FRIEDMAN: Any recross?

5 MR. FANTON: No recross.

6 JUDGE FRIEDMAN: Thank you Mr. Salvati.

7 (Witness excused.)

8 JUDGE FRIEDMAN: Any more witnesses, sir?

9 MR. FANTON: Yes, I have Mr. Atkins.

10 Whereupon,

11 STEVE ATKINS

12 called as a witness, having been first duly sworn in by
13 Judge Friedman, was examined and testified as follows:

14 JUDGE FRIEDMAN: Please be seated and give your name
15 and address to the Reporter?

16 THE WITNESS: Steve Atkins / 1750 Beach Road, Fairfield
17 Connecticut.

18 JUDGE FRIEDMAN: Proceed.

19 DIRECT EXAMINATION

20 Q (By Mr. Fanton) Mr. Atkins, on June 12, 1972
21 were you an employee of Henderson Trumbull Supply
22 Corporation, the Respondent in this case?

23 A Yes.

24 Q How long had you been an employee of Henderson
25 Trumbull at that time?

1 A Roughly four years.

2 Q Would that have been full time or part time?

3 A Part time, full time, depending because I was working
4 between going to school.

5 Q You mean in the summer time it was full time and part
6 time when you were going to school?

7 A Yes.

8 Q Where were you going to school?

9 A Scared Heart University.

10 Q That's in Bridgeport?

11 A Right.

12 Q Did you vote in the union election which is an issue
13 to this date and reached its peak in 1972?

14 A Yes, I did.

15 Q Did you attend a meeting which was held at the union
16 offices on Fairfield Avenue, in Bridgeport on June 12, 1972?

17 A Yes.

18 Q How many people were at that meeting?

19 A Approximately eight.

20 Q Were these employees of Henderson Trumbull Supply
21 Corporation?

22 A Yes, they were.

23 Q Did they all vote in the election which occurred two
24 days later?

25 A Yes.

Q What time of the day was this meeting?

A It was after work, around 5:30, 6:00 o'clock.

Q Can you tell us just in your own words what happened?

A You went to a certain location and then to the office or just tell us what happened?

A Well, all the employees met right after work in the parking lot of Henderson Trumbull.

Q You met in your own parking lot?

A Yes, we met outside and we just all got in cars and went to the union hall on Fairfield Avenue.

A Then we got in and we were told to sit down and chat and wait for Tony.

Q Who is Tony?

A Tony Rossetti.

Q Tony Rossetti and that's Mr. Rossetti sitting here at the counsel table?

(Indicating.)

A Right.

Q Where did you wait?

A In the conference room.

Q Can you describe that for us?

A Well, it was kind of an elaborate office with a giant table about 12 feet long with high back leather seats and several impressive pictures of notable people in the Bridgeport area fixed all over the walls and very impressive

1 office.

2 Was it a panel office?

3 A I can't remember that.

4 Q Now, can you tell us what discussion took place while
5 you were waiting for Mr. Rossetti?

6 A We were sort of chatting among ourselves, trying to
7 ascertain what was going to happen.

8 We all were sort of at the point where we were undecided
9 of what we were going to do.

10 We knew the election was coming up quick, and we had
11 just been sitting among ourselves talking about what was
12 actually happening or what we thought was actually happening.

13 Q What was the topics of the conversations?

14 A What benefits we would receive, what we guessed would
15 be a fair wage and we would accept, just various things.

16 Q Did you talk about what the union would cost you?

17 A Right.

18 We were trying to figure out whether the good would
19 outweigh the bad, whether we would come out a head after
20 everything had happened if the union would be in, if we would
21 be in better shape than without the union.

22 Q This was all before Mr. Rossetti arrived?

23 A Yes, it was just a general discussion among the
24 employees before Tony came in.

25 Q Now, was there anything else said before he came in?

1 A Not that I can recall.

2 Q About how long did you wait for him?

3 A Ten, twenty minutes at the most.

4 Q Can you describe his arrival?

5 A He walked in carrying a briefcase, trench coat, sat
6 down, opened the briefcase, arranged some papers on the desk
7 before him and just sort of gazing up at us to see what we
8 were talking about.

9 Q Can you tell us what exchanges took place after his
10 arrival?

11 A By that I mean questions asked and answers given
12 or discussions.

13 Q Well in the meeting because Terry had arrived we had
14 been like I said, trying to figure out where the money
15 would come from, where such and such benefits would come
16 from, from Henderson Turnbull or whether they would be
17 from the union or what.

18 Q So, we had gotten to the point where we just had
19 no answers.

20 A We just, you know, we couldn't figure out where all
21 the benefits would come from and somehow a million dollars
22 was tossed into the air and it just --

23 Q Tell us what you recall about that.

24 A Like I said, we were discussing where the money would
25

1 came from and like I said it was tossed into the air that
2 Henderson Churchill had made a million dollars.

3 Q Who said that?

4 A That I don't know.

5 Q You don't recall who said that?

6 A No, I don't recall.

7 After the milliondollars was thrown out, everyone was --
8 everyone gasped and said, wait a minute, a million dollars.

9 That's a lot of money to be talking about and it
10 was still the period of time when we were all feeling that
11 we were getting the shaft from Henderson because if they
12 had been able to make that much money we figured that they
13 should be able to give us at least -- well, an equitable
14 pay scale and a few benefits.

15 MR. SOLOV: I must object because this individual
16 has been asked about what he did and he has been talking
17 about we did.

18 We should restrict it to what was said by each
19 individual.

20 JUDGE FRIEDMAN: Sustained.

21 What was said by the individuals Mr. Rossetti, your
22 self, and the other individuals who were around the table
23 at that time just the speeches.

24 THE WITNESS: Well, the million dollars came up and
25 like I said, I know --

(By Mr. Panten) Let me just stop you at this point.

Do you recall meeting with me at my office well, it was on January 6th just over a little over a week ago?

Yes.

And by asking you to tell me in your own words what you recall about this meeting and I am reading now from my notes, and I want to be sure that I was -- that I have it here, and this would have been my writing down what you were saying at the time.

I want to see if you remember this.

MR. ZOLOT: I object.

MR. PANTON: I talked with this gentleman as a preparation in this hearing.

MR. ZOLOT: You haven't shown that you have exhausted his recollection and it seems to me that you are about to impeach your witness.

JUDGE FRIEDMAN: Sustained.

MR. PANTON: What is sustained?

JUDGE FRIEDMAN: Your question.

You can question him about what he told you in his answer, if you want.

MR. PANTON: All right, let's start from there.

MR. ZOLOT: Your Honor, I really don't think he can do without the witness first indicating that he has exhausted his memory and that's my principal objection.

1 JUDGE FRIEDMAN: All right, fine, sustained.

2 MR. FANTON: Let us go a little further than.

3 Q (By Mr. Fanton) I want to make sure your memory is
4 exhausted.

5 Do you want to continue on and answer to the question
6 that Judge Friedman asked a minute ago just tell us as
7 near as you can recall what happened, you were on the point
8 of a million dollars coming up and of course we are interested
9 in who said that, to whom and what reaction there was to
10 it and so forth.

11 So, can you tell us what was said and by whom and what
12 the reaction was?

13 A Okay.

14 I personally mentioned the million dollars and I
15 asked Mr. Rossetti whether that was gross, profits, before
16 taxes or after taxes.

17 He definitely made the point that it was before
18 taxes and before the profit had been taken out.

19 In other words, it was the gross profit of Henderson
20 Trumbull for 1971.

21 Q For 1971?

22 A Yes.

23 Q Did he make reference to any purpose when he gave you
24 this information?

25 You said he was into his briefcase?

1 I wouldn't tell whether he was reading off of a paper
2 or whether he had any evidence or what.

3 There was no real justification for it.

4 Q But, he was looking at some papers at the time he
5 said this?

6 A Right.

7 Q All right.

8 Do you want to tell us what happened after that?

9 A After he had made the point and clarified the point
10 that it was not a clear cut case of them making a million
11 dollars profit, at least for me it was a lot easier to
12 digest because a company these days that makes a million
13 dollars ~~every~~ a year is not in my mind a gigantic corporation
14 that can absorb a lot of pay and a lot of fringe benefits.

15 I can see where to take all of that out of there,
16 that it would hurt a little bit.

17 Q Now, what was said in response to this exchange
18 between you and Mr. Rosseti by the others, I'm speaking of?

19 A How did they feel do you mean?

20 JUDGE FRIEDMAN: What did they say?

21 MR. FAISON: How did they express themselves?

22 JUDGE FRIEDMAN: If you can remember

23 THE WITNESS: Right.

24 Well, they were all obviously. Everyone was --

1 (By Mr. Fanton) How did they express their anger?

2 MR. ZOLOT: I move that that answer be stricken from
3 the record.
4

5 MR. FANTON: He was asked to describe their reaction.

6 I can look and, certainly the witness can tell whether
7 a person is mad or not.

8 MR. ZOLOT: This witness is no more competent to say
9 whether a person is mad than I am, your Honor, and he certainly
10 doesn't have the training or expertise to draw a conclusion
11 of that type.

12 MR. FANTON: I am not speaking of insanity, I am speaking
13 of anger.

14 JUDGE FRIEDMAN: I think that a person can appear
15 angry or not, if you want to use that word.

16 I am going to overrule your objection.

17 Go ahead, Mr. Fanton.

18 (By Mr. Fanton) Do you want to go ahead and describe
19 the anger as it was expressed?

20 JUDGE FRIEDMAN: As you observed it.

21 MR. FANTON: I am asking for his observations, your
22 Honor.

23 THE WITNESS: Okay, like I said everyone was angry about
24 when they heard a million dollars they took a double take
25 and figured that that was a lot of money and it was never
resolved as to what was right, wrong or what the amount was

1 until after the election when, you know, this all came up.

2 That's about as far as I can remember.

3 I might add from that point on we were all sort of
4 unified within ourselves to -- I hope you don't mind --
5 but to answer Henderson Turnbull.

6 (By Mr. Santos) This was after the discussion about
7 the million dollars?

8 MR. SOLOV: I object.

9 There is nothing pending.

10 MR. SANTOS: I am asking him to clarify his answer.

11 MR. SOLOV: He was waiting for you to ask the next
12 question.

13 JUDGE FRIEDMAN: That's right.

14 MR. SOLOV: I move that this answer be stricken from
15 the record.

16 MR. SANTOS: We were asking him what happened.

17 JUDGE FRIEDMAN: I don't know what he means by
18 "unified among ourselves".

19 Before I even take the statement --

20 MR. SANTOS: It's a further statement of what he
21 was thinking of what took place at the meeting.

22 Was this during the meeting that this occurred?

23 THE WITNESS: Right, yes.

24 JUDGE FRIEDMAN: Who said that?

THE WITNESS: That's so far back chronically, I can't

1 say well Frank said this and Joe said that.

2 JUDGE FRIEDMAN: What do you mean by unification?

3 THE WITNESS: United behind the course or **(all felt**
4 strongly against the company and for the union.

5 JUDGE FRIEDMAN: Did someone express this?

6 THE WITNESS: I assume so.

7 JUDGE FRIEDMAN: You assume so.

8 I am going to strike the whole remark.

9 MR. FANTON: I want to dig a little deeper on this,
10 if I may.

11 JUDGE FRIEDMAN: Surely.

12 MR. FANTON: I don't want to try your patience, but
13 I would like to get into this a little deeper because there
14 must be some reason why Mr. Atkins said this.

15 JUDGE FRIEDMAN: Sure. I just wanted to see whether
16 I should strike the remark.

17 MR. FANTON: Yes, your Honor.

18 Q (By Mr. Fanton) I think we are all trying to under-
19 stand what you meant by this last statement.

20 Was this observation of yours based upon what various
21 people in attendance at this meeting said, comments they made?

22 MR. ZOLOT: I would object to that, that calls for a
23 conclusion on the mental processes of every other person.

24 It is improper.

MR. FANTON: It is what they said?

1 JUDGE FRIEDMAN: What they said is a perfectly
2 prop. question but the other part of the question I have
3 to sustain.

4 I will only take what was said.

5 If you can't remember what was said, that's it.

6 MR. PANTON: All right.

7 JUDGE FRIEDMAN: Let me explain this.

8 I am not trying to hold you down in anyway.

9 I want to give you all the leeway that I possibly
10 can, but I can only make a judgment and the Board can make
11 a judgment on statements that were said and if there is no
12 statement that was made and he can't make a positive statement
13 I can't accept it.

14 MR. PANTON: I submit your Honor, this is something
15 that occurred two and a half years ago and a person can
16 retain an impression.

17 Now he may not be able to give you the exact playback
18 unless he recorded everything as to what was said or had some
19 device to give him a accurate transcript, but he can still
20 have an impression and it can be a reliable impression and
21 can be helpful to your Honor in judging this point and that
22 impression can be based on what he observed or what he heard
23 and that's really it.

24 Now, he say this correct they were unified behind the
25

1 union and against the company.

2 It is a sort of dilemma at point and I think we are
3 entitled to get from this witness who was obviously articulate
4 and had some --

5 JUDGE FRIEDMAN: He is an intelligent articulate
6 witness.

7 MR. PANTON: I would like to know what he based this
8 on.

9 THE WITNESS: It is just what I felt. There was
10 really no justification by statements or anything like that.

11 It was just my opinion.

12 Q (By Mr. Panton) But, was it based on what you heard
13 or saw at that meeting?

14 A. ZOLOT: I object. He is not qualified to render
15 an opinion as to anybody else's attitude or the consequence
16 of any such discussion.

17 Your Honor I have gone through one case involving
18 United Aircraft quite recently in which the psychologist,
19 social scientist all agree that the human memory of events
20 that took place decays away from the events.

21 JUDGE FRIEDMAN: Right.

22 MR. ZOLOT: There is no basis whatsoever for this
23 individual now offering testimony not only about his
24 own memory, but also the attitude about other people.

25 That was his motivation at that time? I submit he is

not qualified to answer that question.

JUDGE FRIEDMAN: I disagree.

He can describe appearances of people at that time if he can recall them.

He can describe what was said, if he can remember.

He can describe his own emotions, if he can remember.

Q (By Mr. Fenton) Now, bear in mind because I agree completely with what Mr. Rosen just said, see if you can respond to those points: appearances, what was said and your own feelings in relationship to this statement that is in issue with the discussion you had with Mr. Rossetti on the point.

A What's the question?

I don't understand what you are asking me.

Q Well, this relates to a statement that you made and was objected to by Mr. Kolok and then discussion ensued between us with Judge Friedman kind of leading the discussion.

Mr. Kolok and I making our observations and now we are at the point where the Judge has indicated he will entertain from you testimony with what you observed, the appearance of other people there at the meeting, what they said and how you yourself felt at the time and of course we are relating to this topic.

JUDGE FRIEDMAN: He testified about that, but go ahead.

Q (By Mr. Fenton) Can you give us some help in this

1 area with your testimony?

2 A Nothing further really.

3 Q Nothing further that you recall?

4 A No.

5 Q How did you yourself feel?

6 A I felt that I was -- I left the office with a bad
7 taste in my mouth, feeling that I had been working for a
8 company that didn't care enough for a handful.

9 Q A handful?

10 A A handful of people that were there.

11 Q Why?

12 A I felt then neglected and like I was being used.

13 Q Like you were being used or exploited?

14 A Right.

15 Not by the union, but by the company itself.

16 It was like, you know, knowing you have been
17 working for something and you have been putting all of your
18 energy into it and coming out with half of what you would
19 think you would receive and at least I know myself that I
20 worked hard and I did my share and I felt that it was the
21 least the company could do, you know, it would be to better
22 its employees.

23 Q Now, Mr. Atkins, is there anything else that you can
24 tell us that you can recall about what was said or the
25 appearance of other people at this meeting?

1 Well obviously we were all dirty because we just got
2 out of work.

3 Q I don't mean that, I mean relating to the discussion.

4 A Well, it took a while for the initial shock of the
5 dollar figure being attached.

6 Q Is this the million dollar figure that you are talking
7 about?

8 A Yes. It took a while for that to pass and throughout
9 the whole meeting almost everyone was just saying, you mean
10 they made that much money and we were constantly discussing
11 it.

12 Q I'm sorry, I didn't catch that.

13 A He discussed it among ourselves and like I say, I
14 can't remember the exact people saying that but we were
15 saying, they had really, really made that much money?

16 MR. ZOLOT: I object unless he identifies the person or
17 persons from whom these remarks came from.

18 JUDGE FRIEDMAN: I am going to have to sustain that.

19 MR. PANTON: If he remembers I claim this, I really
20 do.

21 If he is claiming that these things were said, I
22 don't think they have to be tied to an individual.

23 He would be superhuman if he can remember exactly who
24 said what two and a half years ago. But, if he remembers
25 these things were said, it's a great significance in this case.

1 MR. VOIGHT: How do we properly prepare the defense?

2 MR. FANTON: That's right. How can this be met?

3 MR. FANTON: It can be met by the testimony of other
4 witnesses who were there.

5 This is Mr. Atkins' recall all of it.

6 There were seven other people there. We have already
7 heard from two of them.

8 He is entitled to give his contribution about such
9 matters.

10 JUDGE FRIEDMAN: All right, I will take it for whatever
11 it is worth.

12 I want you to understand that the only reason I am
13 taking this at all and at this point, I could not have
14 taken it at an ordinary hearing, but, it is just that it
15 seems to me that the director of the Court of Appeals in
16 this matter has directed that we look into the subjective
17 positions of these individuals to an extent at least.

18 It seems to me whether I agree with the Court of
19 Appeals or whether any of us agree with him or not, but
20 I think this is what makes it this type of situation, so
21 different.

22 I can't place my finger on the exact spot.

23 MR. FANTON: You are correct.

24 JUDGE FRIEDMAN: Among the factors to be considered
25 besides materiality and ^{of the} factual misrepresentations are.

1 the inference that it might have had upon the employees --
2 well, of course, that's just a restatement of another case.

3 MR. FANTON: That's what I had in mind, your Honor,
4 you found it more readily than I did.

5 That's what this line of questioning and testimony
6 relates to, the inference it might reasonably might have had
7 upon the employees.

8 JUDGE FRIEDMAN: Of course, I don't know whether
9 that can be from the employees themselves or whether it would
10 have to be from objective matters which could be reasonably
11 inferred that it would have a certain effect upon the
12 employees.

13 That's the difficult part of these things.

14 MR. FANTON: Admittedly this type of determination --

15 JUDGE FRIEDMAN: I want to give you every opportunity
16 to go as far as the Court has allowed here, but you still
17 don't want to go beyond that point.

18 I want to stay within the Board's decision.

19 The Board ordinarily takes subjective testimony in
20 any matter.

21 MR. FANTON: But, I think the other sentimental point
22 about the Board's decision makes reference to the fact that
23 each case is different, each case has its own facts.

24 JUDGE FRIEDMAN: That's true.

25 MR. FANTON: It seems to me had the Board granted the

regress back when all of this has been in everybody's mind
you might have a different situation, but now it is very
difficult for people obviously to recall what was said what.

It seems to me that it is nevertheless valid and
useful evidence that a man who was there and is testifying
under oath before your honor considers that certain things
were said and whether he can identify the person who said
them, it seems to me it would be fine if he could, but if he
can't, I don't think that detracts the admissibility or
even detract that much from the weight of the evidence.

MR. ROSENBERG: If I can refer to Page 3125 of
SSLRM footnote 4, I think an after avenue of inquiry that
the Court was interested in is set forth in that footnote,
particularly in the last sentence.

MR. FANTON: Well, of course, Mr. Atkins has already
testified on that point about his discussion with Mr.
Rossetti.

There is no question as to what he understood.

JUDGE FRIEDMAN: Well, I don't know, unless someone
told Mr. Atkins and he can testify with some specificity
what their reaction was, what they understood that to mean,
I am going to have to limit you just to that and no more.

I may be in error, but I think I have got to do that.

MR. FANTON: I am not sure I understand the ruling.

I wasn't questioning him about the matters dealt with

1 to indicate fear because he has already answered that question.

2 I was questioning him about the reaction, what he
3 observed and I was trying to find -- follow up what your
4 Honor has suggested what he observed from the appearance
5 of the people.

6 JAMES HAYDEN: My statement at that time might
7 have been too broad.

8 MR. FANTON: I am not quite clear.

9 I can't understand why a person's observation to the
10 extent he recalls what took place in terms of what was
11 said and in terms of the reaction of people as they can be
12 observed while that isn't admissible.

13 How else are you going to prove what affects this
14 statement produced?

15 You can't go into the voting booth and cross
16 examine everybody just how they entered into marking their
17 ballot.

18 You have got to do the best you can from this type
19 of evidence.

20 MR. ZOLOT: We have already done it with two witnesses.

21 MR. FANTON: To the extent of their recollection, that's
22 right.

23 This gentleman recalls a little more than the others
24 which is only natural.
25

1 people have different powers of recall.

2 I don't think you need any special scientist to
3 indicate that memory fades over the years.

4 JUDGE SWINDELL: No, of course they do and that's
5 the difficulty I am having here.

6 Not sure, we have reached what I consider a very
7 crucial point here and I don't want to cut you off and at
8 the same time I also don't want to do harm to anyone else.

9 I want to be as fair as I possibly can about the
10 whole thing.

11 I think we are going to have to stick to the ordinary
12 rules the normal rules that can -- that he can testify
13 to what reaction he had, what he observed of other people,
14 but I think there has to be some more detail, not just the
15 general idea that people appear to be annoyed or stated that
16 they were annoyed.

17 Who stated it and under what circumstances is
18 important.

19 MR. PANTON: It seems to me he was telling us what
20 he heard at the meeting and so, we certainly identified
21 the location, it is at the meeting and it's what he heard
22 and what he observed and that's all I am inquiring about.

23 Now, the fact that he can't say as he himself mentioned
24 a while back that Joe Doe said this or John Jones said this,
25 these were all employees who voted in the election.

1 There is no basis for classifying different groups,
2 or that anyone of them said, if it's indicated that they
3 had been influenced by this comment, this remark, this
4 discussion Mr. Atkins had with Mr. Rossetti, had an effect
5 on them, that anyone of them said is important for your
6 Honor to hear.

7 It would be great if you can indicate that each
8 one -- this is what each one said, but we don't have some
9 kind of recording device as to what went on at that meeting.

10 I think two and a half years it might have been
11 possible, but I think today to try and identify who reacted
12 in a particular way and made a particular statement that
13 is rather difficult and unless he does remember, if he
14 does, fine.

15 JUDGE FRIEDMAN: I am going to have to sustain
16 the objection.

17 That's my ruling.

18 MR. FANTON: I don't know, it has been a while
19 since I had had one of these proceedings.

20 Is it customary to take an exception to your Honor's
21 ruling?

22 JUDGE FRIEDMAN: You have an automatic exception.

23 Q (By Mr. Fanton) Well, Mr. Atkins, you have used the
24 word "check" in your testimony relating to the reaction that
25 took place from the statement regarding the billion dollars.

1 Do you remember in terms of specific bearing
2 in what the Judge's ruling, what anyone said or did at this
3 meeting following that statement?

4 A No. I don't remember.

5 Q You can't tie it down to any individual or identify
6 a person or anything like that?

7 A No.

8 Q And the only thing that you can give us is an
9 impression that you yourself still retain, is that correct?

10 A Yes.

11 MR. FANTON: If I understand your Honor's ruling, you
12 have ruled that that is not admissible?

13 HONOR FANTON: I will permit that.

14 Q (By Mr. Fanton) Did you give a statement, Mr. Atkins,
15 to Mr. Chalet, the National Labor Relations Board examiner
16 who investigated the company's objections right after the
17 election?

18 A Yes.

19 Q Do you have that statement with you?

20 MR. ROSENBERG: Your Honor, I should note this is
21 another unsigned statement.

22 It is not signed by Mr. Atkins.

23 It is noted, this statement Mr. Chalet says, this
24 statement was given to me by Mr. Atkins on such and such a
25 date.

1 This is Mr. Atkins' copy. I took it from him so he
2 wouldn't be looking at it while he was on the stand.

3 I note however that since it is not a Jencks statement
4 I would have difficulty in releasing it to Mr. Chalet unless
5 we can show that there was some form of adoption and since
6 Mr. Chalet might be deprived of its use, I think we ought
7 to clear that up right now before anybody gets to use the
8 statement.

9 If we can get the circumstances in taking this
10 statement, that it was indeed his statement and as adopted
11 by him, then I wouldn't be troubled by it at all.

12 HENRY FRIEDMAN: Let me ask some questions then.

13 Q (By Judge Friedman) Did you read this statement
14 after it was taken by Mr. Chalet, at the investigator for the
15 Board, the one that questioned you?

16 A I think I read it yes.

17 Q At the time that you read it --

18 A I refused to sign it.

19 Q Why did you refuse to sign it?

20 A Because I just didn't feel that I wanted to get
21 involved at that point.

22 I felt it was my right to exercise whether I wanted
23 to or not and I chose not to sign it.

24 Q (By Mr. Rosenberg) Did you tell Mr. Chalet that it
25 was a true statement when you gave it to him?

1 I didn't want to anything or provide him that it
2 was definitely --
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6 (Continued on next page.)
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1 If I had been completely behind it I would have
2 signed it, but, I thought like it was being taken in
3 direct, that was my opinion and that's why I didn't sign
4 it.

5 Q But, you did affirm -- not affirm in a sense of --
6 well, in a sense that this is my statement?

7 A Right.

8 Q You read it over after he wrote it down?

9 A Yes.

10 Q You said yes, that's okay, that looks like it's
11 right?

12 A Yes, a loose yes, that's nothing concrete, that's
13 yes that's definitely what I said.

14 Q Was there anything in there that was substantially
15 different from what you said?

16 A No.

17 JUDGE FRIEDMAN: I think that under the circum-
18 stances, although he didn't adopt it as his statement,
19 in a sense that yes that is my statement, he also said
20 there was nothing in there that was not true, is that
21 right?

22 THE WITNESS: Yes.

23 JUDGE FRIEDMAN: In other words, this statement
24 was taken from what you told the Investigator and at that
25 point you looked it over and you found that there was

1 nothing in the statement that wasn't true, but, you
2 felt you didn't want to sign it merely because you
3 felt you had a right not to sign it and it was being
4 taken under duress?

5 THE WITNESS: Yes.

6 JUDGE FRIEDMAN: But, not because the statement
7 wasn't true?

8 THE WITNESS: Yes.

9 JUDGE FRIEDMAN: He can be allowed to show to
10 both Counsel and I will so rule.

11 Q (By Mr. Fanton) Mr. Atkins, how was this state-
12 ment taken?

13 I notice the original appears to be dated Monday,
14 June 26, 1972 and when I say how, I mean just what
15 happened at that time?

16 A On the 26th?

17 Q Yes.

18 A Well, we had arranged with Fred to sit down with
19 this I don't know what the National Labor Relations Board
20 called him, we had explained to him on a one to one basis
21 what actually happened at the meeting in the basement of
22 Henderson.

23 MR. ROSENBERG: Can you speak a little louder please?

24 THE WITNESS: We had -- or I have discussed with
25 Fred basically what was going to evolve out of this

meeting, making this statement and I agreed to go along with it up to the point of signing it and putting my name on it.

I couldn't even tell you what the guy looked like. I have no recollection of it.

Q (By Mr. Fenton) Did he ask you questions?

A I assume he must have.

Q Do you remember?

A Yes, I remember him asking me questions, of course.

Q Then this is not your writing, I take it?

A No.

Q As he asked you the questions, what did he do?

A Wrote them down.

Q Is this a statement that he wrote out at that time?

A Yes.

Q As you recall it?

A Yes.

Q I am reading from this statement which you yourself have read and affirmed.

It says here, "Rossetti explained what would be happening on Wednesday at the election.

"Then there was a sort of question - answer period when one of the men asked Rossetti how much money we would get with the Union in.

"Rossetti told us he did not know at that time.

"Then he said something about the Company making \$1 million last year.

"One of the men asked how could they make that much."

It says "He did not say --"

There is a marginal note here, "He did not say whether this was net, gross or profit."

Is this something you said to Mr. Chalet?

A Obviously if it was a marginal note it was added later.

Q You don't recall saying that yourself?

A No.

Q And "Rossetti answered to the effect that we have to know they are making a lot of money.

"Then someone, I'm not sure if it was Rossetti, said 'Look at Salvati's house, it's worth about \$75,000'".

Now, you recall that taking place at the meeting just as you stated it here in this statement?

A Yes.

Q Then there was a further comment here, "At a meeting with Henderson and Salvati just before the meeting with Rossetti, we were told the Company netted \$300,000 last year."

Tell us about that.

Can you recall any such meeting about that?

A I recall a meeting, yes.

I can't actually remember whether the \$300,000 figure was actually what they thrown out, but, I know it was much less than what Mr. Rossetti has said.

Q When did that meeting occur?

A That was previous or the day before the election, whichever it was actually legal for them.

Q This was the meeting just before the election?

A Right.

Q Then there is a supplementary statement which was given on Monday, July 10, 1972, two weeks after your first statement.

Did you see Mr. Chalet in person?

A I don't even really remember what he looks like.

Q You don't remember the second meeting?

A No.

Q And in this statement which you have indicated was the truth when you submitted it, it stated that "When Rossetti mentioned how much money the Company made last year, I believe he said one point two or one point three million dollars.

"As to this statement concerning Salvatti's house, I think it came from J. C. Anderson. Rossetti did not bring it up."

1 You, is that --

2 MR. ZOLOT: As I understand it, he is reading
3 from the document.

4 I think it should be made an exhibit.

5 MR. FANTON: I have no objection.

6 JUDGE FRIEDMAN: All right.

7 We will put it in as Respondent's Exhibit No. 5.

8 (The document above-referred to
9 was marked Respondent's Exhibit
10 No. 5 for identification.)

11 JUDGE FRIEDMAN: It is an unsigned statement
12 of Stevan Atkins.

13 Are you offering it?

14 MR. FANTON: Yes, I am.

15 JUDGE FRIEDMAN: Is there any objection?

16 MR. ROSENBERG: No objection.

17 MR. ZOLOT: No objection.

18 JUDGE FRIEDMAN: It is received.

19 (The document above-referred to
20 heretofore marked Respondent's
21 Exhibit No. 5, was received in
22 evidence.)

23 Q (By Mr. Fanton) Now, Mr. Atkins, is there any-
24 thing else that you can recall?

25 I read you certain parts of that statement that
you have affirmed and you have given us an account up
to this point as to what was discussed and what was said

by Mr. Rossetti and others.

Now, is there anything else that you can recall that was said or took place or any action taken, conduct of people, anything that you observed in addition to what you have told us?

A No.

Q Now, going back to the -- since I have exhausted your recollection for the moment, going back to the meeting that you and I had a little over a week ago at which I asked that you give me in your own words what you remember of this same meeting that we have been talking about here today, I am reading from my notes just as Mr. Chalet took down your statement, I did the same, and I would like you to tell me whether you recall it as being a correct account of the subject matter covered.

MR. ROSENBERG: I am going to object, your Honor.

He hasn't attempted to refresh the witness' recollection.

He is making a whole leading statement as what supposedly this gentleman said to him.

He is going to read his statement and ask him if he said that.

It is leading and he hasn't tried to refresh the witness' recollection with any information.

MR. FANTON: I can show the witness my notes if

1 he can read my writing.

2 JUDGE FRIEDMAN: Well, first ask him if he recalls
3 what he said to you last week.

4 MR. ZOLOT: That's what I was going to say, your
5 Honor, furthermore your Honor since it is nature of
6 exam preparation for trial, it isn't necessarily ad-
7 missible at all on that basis.

8 MR. FANTON: Well, do you recall telling me,
9 Mr. Atkins -- I am entitled to ask the witness what he
10 told me in preparation for this hearing.

11 MR. ZOLOT: He is impeaching his own witness.

12 MR. FANTON: It's a question of refreshing his
13 memory.

14 MR. ROSENBERG: We are not interested in recalling
15 what he told you, we are interested in recalling the
16 original events.

17 JUDGE FRIEDMAN: I don't want you to tell me
18 what he told you.

19 MR. FANTON: I am saying, your Honor, what he
20 told me then presumably was his recollection of what
21 happened at the time in question.

22 I don't see anything improper about trying to re-
23 fresh his recollection to that extent.

24 He came to my office.

25 I did the same thing Mr. Chalet had done two and

half years ago.

JUDGE FRIEDMAN: When Mr. Choiet requested him to make a statement two and a half years earlier, it was very shortly after the event.

This is approximately almost two and a half years after that you spoke to this gentleman concerning the subject matter here and if you are asking him did he tell you this or did you tell me this last week, that does amount, I think, to really question the veracity of your own witness.

MR. FANTON: The products of recall.

MR. ROSENBERG: Your Honor, may I be heard?

Because of the new Federal Rule that we operate under, the rule recognizes that Counsel is not always free to choose which individual or individuals he is going to be required to prove his case with and I think to at least substantially expect impeaching one's witness, it has been modified.

JUDGE FRIEDMAN: Yes, I am not arguing with that.

MR. ZOLOT: Here we are trying to recall what was said about two and a half years ago.

This witness allegedly last week went through the same process and today he is being called upon to now do something which apparently in a week's time he has forgotten about.

1 I would object to it.

2 JUDGE FRIEDMAN: Well, I will tell you this, there
3 is a difference.

4 A week ago he wasn't testifying under oath, today
5 he is subject to prosecution for not telling the truth
6 and I think there might be some difference there.

7 MR. ZOLOT: I would dissent your Honor from your
8 comment because I just can't accept that.

9 As the saying goes, when you are talking with
10 Counsel, level with him.

11 JUDGE FRIEDMAN: I don't always assume that.

12 I have seen too many of these hearings that are
13 popped open because --

14 MR. FANTON: If I can be permitted a minute, I
15 am realizing as I am reading this statement, it is not
16 any different from what he has testified to on the stand.

17 JUDGE FRIEDMAN: Well, we have been arguing for
18 nothing.

19 Let's proceed with the examination.

20 MR. FANTON: I apologize for taking this much time.

21 Q (By Mr. Fanton) Mr. Atkins, you remember being
22 questioned by Mr. Salvati about this statement that Mr.
23 Rossetti made about the Company making more than a million
24 dollars?

25 A Yes.

11

Q When did he question you on that, was that after the election?

A A few days after the election.

Well, the point of the million dollars, Fred knew about right after the election and right after that, like I say, a few days in between that, this fellow came for the statement.

Q Now, going back to the meeting that you had with Mr. Salvati and Mr. Henderson, just before the election, this is one or two days before the election, I presume, tell us what you can about what was said at that meeting?

Tell us what you can recall.

A I really don't recall what was actually said except that it was after we have been with the Union and we were questioning whether the million dollar figure was right or wrong.

I don't actually remember if we questioned Fred or Homer on the point of whether or not that figure was right or wrong, but, the closest that I can ascertain, just looking around and knowing prices and things like that, it just seemed that the million dollars was way out of the ballpark.

Now, whether anything was actually said by Homer or Fred to the point of a lesser sum, I don't remember.

Q Do you remember the profits being discussed at

all at that meeting or anything being said by Mr. Salvati or Mr. Henderson?

MR. ZOLOT: There is some confusion as to when this conversation took place.

JUDGE FRIEDMAN: All right, let's clear up the line on it.

MR. ZOLOT: Yes, after the Union meeting?

MR. FANTON: I want to get the point clarified as to whatever extent, your Honor feels.

JUDGE FRIEDMAN: You can ask the question again. Let the record speak for itself.

MR. ZOLOT: I'll pick it up on cross then.

Q (By Mr. Fanton) Mr. Atkins, do you recall meeting with Mr. Salvati the Monday afternoon before you went to the Union meeting, the Union meeting you have been testifying about?

A I have no recollection.

Q You don't recall meeting with him before that meeting, this was on the 12th, this was that Monday, June 12th?

A I might have, but, like I say, I don't actually recall.

Q You don't recall?

A No.

This was a crazy time, you know, there were just

so many swords being stabbed.

It was just like I didn't know whether I was coming or going and it's hard to remember who I said what to and what I did, you know, whether I saw him at such and such a time or this time or another time, you know, it is unclear to me at this point.

Q Now, let me take you back to the last meeting you had before the election which was as I understand it conducted by Mr. Henderson and Mr. Salvati was present or a large group was present, is that correct?

A Yes.

Q Can you tell us how that meeting was conducted? Did someone give a talk or was it more or less questions and answers?

A Again, it was after work in the store.

We gathered around the rear of the store. It was sort of like a pep talk.

Their reasons for not wanting a Union, just a pep talk.

Q Who did the talking?

A Mr. Henderson from what I remember.

Q I'm sorry?

A Mr. Henderson.

Q Did Mr. Salvati say anything?

A A few things, yes, but Mr. Henderson did the

majority of the talking.

Q Did he have a prepared text or anything he was talking from, a piece of paper, do you recall?

A I don't think so.

Q You don't recall?

A I can't be sure.

Q Were there any questions from employees or was it just them talking?

A Well, it was sort of like a lecture in the beginning and then a few questions were raised, what they were and anything like that, I can't recall.

I'm sure questions and answers did evolve.

Q Did Mr. Henderson ask some questions?

A Yes.

Q You remember some being asked?

A Yes.

Q How long did he talk, how long did he speak?

A I would say the whole meeting lasted 45 minutes and he was talking about 25 minutes.

Q How long did Mr. Salvati talk?

A Around another 20 minutes.

Q Another 20?

A Yes.

Q And you are sure this was after work?

A Well, I remember going home afterwards, whether

1 it was after work or whether it was a special meeting
2 that was called in the middle of the day, you know, I
3 can't recall.

4 Q As near as you can recall, this was the day be-
5 fore the election or the last one before the election?

6 A Well, as far as being exact, whether it was the
7 day before or the day after -- it definitely wasn't the
8 day after, but whether it was before the Union or after
9 the Union -- I can't recall that either.

10 I know that it was legal to talk to us then and
11 then right after that they couldn't say a word after that.

12 Q That was the last time -- was that the last time
13 that either Mr. Henderson or Mr. Salvati talked to you
14 before the election?

15 A Yes.

16 Q How long -- you said Mr. Henderson talked about
17 25 minutes?

18 A Yes.

19 Q How about Mr. Salvati, how long did he talk?

20 A Well, it was shorter than what Mr. Henderson had
21 to say, as far as an exact time I can't pin it down.

22 Q As best you can recall.

23 A Roughly 15 minutes.

24 Q Well, you have a definite recollection of some
25 questions being asked by employees?

1 A Not definite questions.

2 I can't even give you a general question.

3 Q Do you recall any questions?

4 Do you have any recollection of questions being
5 asked?

6 A I could come up with a few, but, nothing concrete.

7 Q When you say you could come up with a few --

8 A Well, I am sure in my mind I was questioning the
9 million dollars and I wanted to find out from them whether
10 that was right, wrong or indifferent.

11 Q Well, do you have any recollection now of asking
12 any question on that subject?

13 A You mean the employees or me?

14 Q You or any of the employees asking that question
15 specifically.

16 A No, I don't.

17 MR. FANTON: I have no further questions, your
18 Honor.

19 JUDGE FRIDMAN: All right, Mr. Zolot.

20 CROSS-EXAMINATION

21 Q (By Mr. Zolot) Mr. Atkins, a reference has been
22 made to a statement which you confirmed that the state-
23 ment was correct, is my understanding correct?

24 A I -- that's why I didn't sign it because I
25 questioned what had been written, but -- okay, I will

17

say yes.

Q What did you question mentally as to what had been written in the statement which is now Respondent's Exhibit 5?

A I was questioning as to who said what.

Q There was no question in your mind that when it was recorded by a Board Field Examiner, "What was said at the meeting did not cause me to change my mind about how I was going to vote in the election" is that a correct statement?

A Definitely.

Q So whether the figure was --

A It didn't matter to me.

My mind was made up.

Q So, whether it was a million dollars or if there was any conversation with respect to Salvati as far as you are concerned, it didn't matter?

A Yes.

Q As far as you know, do you know of any person who was in attendance at that meeting whose attitude with respect to the election was changed by that statement?

A Not directly, but, I have an opinion, but nothing concrete, again.

Q I just want to ask you a couple of more questions then.

Are you currently working for the Company?

A No.

Q When did you terminate your employment?

A Two weeks after the election.

Q Were you one of the individuals accused of taking materials and money?

A Right.

Q By this Company?

A Right.

Q Now, the last thing I want to ask you about is the circumstances under which you made your original statement to Mr. Salvati about the million dollars.

How did it happen that that conversation came up between yourself and Mr. Salvati?

A I personally didn't bring it up.

Jerry Cataldo talked to him first and then it was me and Peter Garrick.

I was the second one to talk to Fred.

We went down into the basement of the store and he asked whether I had heard the million dollar figure raised and I told him yes, and he said that he would get someone there to take a statement to that fact.

Q Now, I have the Stenographer read back the answer because I was uncertain about your answer.

First, did you have any conversation with Mr.

Salvati or Mr. Henderson following the Union meeting to question either of them concerning the million dollar figure?

A No.

Q Did you have any discussion with either of them concerning the million dollar figure?

A No.

Q Do you recall Mr. Rossetti saying at some point of the meeting that it took a half a million dollars to get jurisdiction under the National Labor Relations Board?

A Do I remember him saying that?

Q Or words to that effect?

A No.

Q Now, in this statement you said you had a meeting with Henderson and Salvati, Henderson being the President of Henderson Trumbull Supply, just before the meeting with Rossetti, the Company netted \$300,000 last year.

Do you recall who made that statement for the Company, whether it was Mr. Henderson or Mr. Salvati?

A I can't recall which it was.

Q Do you recall the circumstances -- by the way, that statement was made, is that correct by one or the other at that meeting?

A Yes, but, whether it was 300,000 or another figure I have no idea.

1 Q Do you recall the circumstances under which you
2 had a discussion about how much profit the Company has
3 made in the last year?

4 A With Salvati and Henderson?

5 Q Yes.

6 A No.

7 Q Prior to that meeting, had you received two letters
8 from the Company with respect to reasons not to vote
9 for the Union, being Charging Party's Exhibits 2 and 3?

10 A Yes.

11 Q You received one from the Union?

12 A Yes.

13 Q And the Union letter said they specifically,
14 did it not that "As far as promises are concerned, we
15 have only made one and we intend to keep it. If Local
16 191 are voted in as your bargaining representative, you
17 will be represented honestly, fairly and by the largest
18 and strongest Union in the World."

19 Is that right?

20 A Yes.

21 Q Did Mr. Rossetti repeat that statement at the
22 meeting to which you refer to?

23 A Yes.

24 Q He couldn't promise you anything, everything had
25 to be negotiated?

21

A Yes.

He gave no dollar figures or how much we would make or what fringe benefits we would be receiving, we would have to sit down after the election with the Employer and ascertain that.

Q Was that in the course of the discussion about what the Company could afford to pay?

A Yes.

Q Mr. Rossetti said in effect it doesn't make any difference, you have to negotiate it out, is that correct?

A Yes, right.

MR. ZOLOT: Thank you very much.

JUDGE FRIEDMAN: Do you have any questions?

MR. ROSENBERG: No.

JUDGE FRIEDMAN: I have a question and I will be perfectly frank.

This question arises out of the decision of the Court of Appeals.

EXAMINATION

Q (By Judge Friedman) You stated on your direct examination area somehow a million dollars was tossed into the air.

A Yes.

Q Do you recall what was said exactly about that million dollars?

How the million dollars was stated?

A You mean how it got into the discussion?

Q No, what was said about the million dollars.

Let me ask you this:

Did they say the Company grossed a million dollars, they made a million dollars?

A They said a million dollars.

I questioned it myself. I remember that and I asked Mr. Rossetti was that profit and he said no, that that was gross, before taxes.

JUDGE FRIEDMAN: Okay, thank you.

EXAMINATION

Q (By Mr. Rosenberg) Was everybody at attendance at the meeting when you asked this question?

A Yes, but they weren't paying attention, they were talking among themselves and I think that I was probably the only one that caught on to that.

I explained it later to the employees that --

Q You did explain it later?

A Yes.

FURTHER CROSS-EXAMINATION

Q (By Mr. Zolot) What did you explain that meant?

A I explained that that meant Henderson Trumbull did not make a million dollars profit and that was like before the electric bills and utilities were paid, before

the taxes were paid and, you know, there were a lot of things that have to be considered, that just wasn't profit.

Q When did you make such statement?

A Before the election.

Q To whom did you make such statement?

A The employees at the Union hall.

Q Did you make it to all the employees then present?

A Not to all of the employees, just the men that were at the Union hall meeting.

Q You did that before the election?

A Yes, right.

MR. ZOLOT: I have nothing further.

JUDGE FRIEDMAN: Is there anything else?

MR. ZOLOT: Nothing further, your Honor.

MR. FANTON: Yes.

REDIRECT EXAMINATION

Q (By Mr. Fanton) Mr. Atkins, did I understand you to say that some of the men that were at this meeting were angry?

A Yes.

Q When they heard this million dollar figure?

A Yes.

Q Did they express their anger verbally in language, if you can remember?

MR. ROSENBERG: Your Honor, we have gone over this, this is repetitive.

MR. FANTON: I am going into things that have been brought up on cross-examination.

MR. ZOLOT: I don't recall opening it up, your Honor.

JUDGE FRIEDMAN: Perhaps I did.

Proceed.

Q (By Mr. Fanton) Would you answer the question?

A Do I remember exact words, no.

Q By the same token, was Mr. Rossetti present when you explained this, you said you made an explanation?

A No.

Q He was not present?

A No.

Q Where did that take place?

A Like I said, in the yard itself, in work or possibly in the bar where we were after the meeting.

Q How many people were in the bar with you?

A Two.

Q What's that?

A Two.

Q Two others?

A Yes.

Q Who were they?

A Peter Garrick and Jerry Cataldo.

Q What other discussion do you recall having with these men who were at this meeting beyond this discussion at the bar?

I want the specifics of your recollection just as you were not permitted to testify unless you could describe who you talked to or what you said to them.

I claim the same rule applies here, I want to know who you talked to and what you said to them and where you said it and what response they made or what questions they may have asked.

A All at once or one at a time?

Q Anyway you want to give it.

You have mentioned Garry Cataldo at the bar.

A We were in my car getting to the Union hall, so, naturally, we all left in my car to go to the bar afterwards.

Q When you say all who was in the car?

A Cataldo and Garrick.

Q Continue.

A We were discussing among ourselves the million dollar figure, tossing it around and then I explained to them that they have not just made that complete amount, a million dollars profit which afterward they seemed to understand, whether it made any difference or not, it

1 is beyond me.

2 I remember J. C. Anderson just before the election
3 asking me what I have told Garrick and Cataldo about it
4 because somehow it got back to him, to J. C.

5 So, I explained it to him in the yard the day
6 of the election.

7 Q Was this before the voting or after the voting?

8 A Before.

9 Q Continue.

10 A The rest I can't actually pinpoint because it
11 took place during the course of the day.

12 We have seen each other in hits and pieces for a
13 couple of minutes.

14 I don't remember telling B. J. -- Fred B.J. or
15 Jerry Dumas, I don't remember.

16 I didn't tell them anything.

17 I just figured they have enough brains to ascertain
18 that themselves.

19 Q Then the only three outside yourself with whom
20 you can recall discussing this would be Garrick, Cataldo
21 and J. C. Anderson, correct?

22 A Right.

23 Q Now, talking about Garrick and Cataldo, just what
24 discussion took place?

25 Give us your own words as to what you said and

1 what they said.

2 A Where could a million dollars come from?

3 Q Now, who said that?

4 A Garrick, I believe.

5 How could they get that much money and in our
6 own minds we just couldn't see how.

7 Q Not in your mind, what was said?

8 A Okay.

9 We just kept saying over and over, a million
10 dollars, a million dollars, a million dollars.

11 Q Were they angry with this?

12 A Upset.

13 I wouldn't say angry. They were, you know, just
14 upset.

15 Q In your earlier testimony --

16 A I said mad.

17 Q In your earlier testimony and it was objected to
18 because you could not relate it to a specific individual
19 and conversations.

20 Now, the conversation you are describing now, is
21 this where you observed that the others were uniting for
22 the Union and against the Company?

23 Is this the conversation where you have Garrick
24 and Cataldo for instance?

25 Is this the conversation?

1 MR. ZOLOT: I object, that calls for a conclusion.
2 He is asking for the impact of such conversations.

3 MR. FANTON: He gave his impression before and
4 it was excluded because he couldn't relate it to a
5 specific person.

6 JUDGE FRIEDMAN: Now he is trying to pin it down
7 to an individual.

8 Go ahead. Ask the question.

9 MR. FANTON: Do you have the question in mind?

10 JUDGE FRIEDMAN: Perhaps you better ask it again.

11 Q (By Mr. Fanton) You are telling us about this
12 conversation at the bar?

13 A Yes.

14 Q Where you were angry and they were angry or mad or
15 upset, whatever term you want to use and you are re-
16 ferring to --

17 A A million dollars, a million dollars.

18 We just kept on saying it.

19 Q Let me ask the question.

20 I want you to be clear on the particular dis-
21 cussion that I am talking about, this is a discussion
22 after the meeting and at the bar when you were talking
23 and you said that they were mad, angry, upset.

24 Those were the words that were used and I asked
25 you if it was from that conversation and discussion

1 that you formed this impression which you talked about
2 earlier in your testimony.

3 MR. ZOLOT: I object.

4 MR. FANTON: Let me finish it.

5 THE WITNESS: Did I ascertain from that whether
6 they were mad?

7 Q (By Mr. Fanton) Whether they were united for
8 the Union and against the Company.

9 MR. ZOLOT: I object.

10 The testimony with respect to these two individuals
11 is already in the record.

12 They have testified as to their reaction as to
13 the events of that meeting.

14 They have testified before your Honor, I just
15 think it is improper to get such evidence third hand.

16 JUDGE FRIEDMAN: Well, I think, regardless of what
17 the other two testified to, he can testify as to what
18 he observed and what he saw.

19 MR. ZOLOT: Not to the mental state or reaction.

20 MR. FANTON: I am asking him what they said.

21 JUDGE FRIEDMAN: I think you are misinterpreting
22 the question.

23 MR. ROSENBERG: If I may be heard, I don't want
24 to take a position, but, Mr. Fanton has in his question
25 assumed a fact which is not in evidence in this proceeding.

The fact that was specifically excluded by ~~NY~~ Honer's ruling.

JUDGE FRIEDMAN: That's right.

MR. ROSENBERG: He has assumed that fact in phrasing that question which is improper.

MR. FANTON: I beg to differ with that entirely.

I am entitled to ask a question and the reason the answer was excluded before was for this very reason, there weren't enough specifics separate on it to give it sufficient weight.

JUDGE FRIEDMAN: There was no specificity with regard to what individual said what to what, and what individual appeared to react in a certain manner.

If you can pin it down to individuals, fine, if not, the same rule is going to apply.

MR. ROSENBERG: You want to know what these individuals said?

MR. FANTON: That's right, that's what I am asking for.

THE WITNESS: I think it was here where the three of us decided to vote for the Union.

Well, not because of the million dollars on my part, but, because like I say, I had questioned it and found out it was gross, before taxes and I finished explaining that to them and they looked, they looked up

at me and said, we are going to stick by our decision and vote for the Union.

Q (By Mr. Fanton) Who was that?

A Peter Garrick and Jerry Cataldo.

Q Other than those two gentlemen, J. C. Anderson is the only one you talked to?

A Yes.

Q Now, do you recall what he said to you?

Did he ask you a question and you answered it?

What happened?

A Basically it was the same thing.

He would look at each other and say a million dollars and I said million dollars gross before taxes.

Q What did he say?

A Oh. That's it.

Q He just said "Oh"?

A Yes. Like it didn't matter.

MR. FANTON: There is no question pending and I move the answer be stricken.

JUDGE FRIEDMAN: I am going to strike that.

Q (By Mr. Fanton) On cross-examination you were asked by Mr. Zolot if you knew of anyone who had changed their mind because of this discussion about the million dollars at the meeting in question on June 12th and you said not directly.

What knowledge do you have of anyone who changed his mind?

A I don't.

Q So then, not directly, what was the reason for the use of the word directly?

A I heard afterwards from everyone involved that things -- not that the million dollars had changed their minds, but it had strengthened it, fortified it, their feeling.

Q When you say you heard that afterwards, was this from the same group of people?

A Yes.

Q And did you hear this from all of them?

A No.

I can't give you specifics.

Q You can't give us specifics?

A No.

Q You can't tell us the names of any individuals?

A No.

MR. FANTON: I have no further questions, your Honor.

JUDGE FRIEDMAN: Anything else?

MR. ZOLOT: Nothing else.

MR. ROSENBERG: Nothing else.

JUDGE FRIEDMAN: You may be excused.

(Witness excused.)

JUDGE FRIEDMAN: All right, proceed.

MR. FANTON: Mr. Baldwin, will you take the stand.

Whereupon,

RAYMOND BALDWIN, JR.

was called as a witness by and on behalf of the Company and, having been first duly sworn by Judge Friedman, was examined and testified as follows:

JUDGE FRIEDMAN: Will you please be seated and give your name and address to the Reporter.

THE WITNESS: Raymond Baldwin, Jr., 43 Hickory Lane, Fairfield, Connecticut, 06430.

DIRECT EXAMINATION

Q (By Mr. Fanton) Now, Mr. Baldwin, did you have a meeting with Mr. Cataldo who has testified here today and Mr. Salvati who has also testified here today on June 19, 1972?

A Yes, I did.

Q That was a Monday?

A Monday morning.

Q Will you describe for the record what occurred at that meeting?

MR. ZOLOT: I object unless it is germane to the issues raised by the remand.

I don't care what they told him.

1 It is all third hand.

2 It is hearsay.

3 MR. FANTON: It's corroborative of Mr. Salvati's
4 and reinforcing and corroborating to a degree Mr.
5 Salvati's --

6 MR. ZOLOT: He is not a participant to the events
7 concerned.

8 If he is having a conversation with individuals
9 who allege that they have conversations, that's hearsay.

10 JUDGE FRIEDMAN: I will take it for what took
11 place at the conversation, but I won't take it for the
12 truth of the matter.

13 MR. ZOLOT: What's the relevancy?

14 JUDGE FRIEDMAN: I don't know.

15 MR. ZOLOT: I am objecting, irrelevant, hearsay
16 and I think it is improper.

17 MR. FANTON: I am prepared to concede that it is
18 hearsay to a degree, but, by the same token, hearsay
19 as we all know is admitted in these proceedings, not
20 freely or rightly, but nevertheless it is admitted and
21 I think you have a witness here, with respect to this
22 meeting, Cataldo, who was the one originally that gave
23 us the particulars of what did take place and he did
24 appear here today as a witness and after two and a half
25 years, his memory was not as clear as it might have been

1 then and we have to use his statement to refresh his
2 recollection.

3 The point I am making here is that Mr. Baldwin
4 just as Mr. Chalet took a statement.

5 Mr. Baldwin even before Mr. Chalet took a state-
6 ment from Mr. Cataldo and I think he is entitled to
7 give his recollection of what statement was.

8 I think we are trying to reconstruct the recol-
9 lection of this witness as best we can after two and a half
10 years.

11 JUDGE FRIEDMAN: The difference is however, so,
12 that Mr. Cataldo's statement was adopted and signed by
13 Mr. Cataldo.

14 MR. FANTON: That's true.

15 JUDGE FRIEDMAN: And this is just a recollection
16 of what this gentleman -- I don't doubt that he's going
17 to tell the truth of what the recollection was, but,
18 I don't know whether it is --

19 MR. FANTON: It is similar to an attorney's
20 affidavit.

21 We were criticized initially for not furnishing the
22 affidavit.

23 If we had furnished an affidavit it would have
24 been Mr. Baldwin's affidavit.

25 MR. ZOLOT: You have the principal witness here,

Council has every opportunity to refresh and re-examine and if he wanted to get the evidence of that witness, it would be directly.

You can't do it indirectly by in effect saying Mr. Baldwin's recollection of what Mr. Cataldo said is better than Mr. Cataldo's recollection of what he said.

Now, I think this is absurd.

MR. FANTON: I think we are entitled in this type of a proceeding to corroborate, this isn't going to be a conflict with Mr. Cataldo's testimony or Mr. Salvati's either, and while it might appear objectionable, it might be objectionable because it is accumulative, but, I think the issue of credibility is a difficult one to resolve.

I think it is important to have as much corroborative testimony and evidence as is available.

This is the sole purpose of the offering of this witness, to be helpful to the record and to the Administrative Law Judge.

Now, if the Judge feels other corroboration isn't needed, I won't press it.

JUDGE FRIEDMAN: I'm not going to judge that now at this stage of the game.

MR. FANTON: That's the reason I am offering the witness.

1 JUDGE FRIEDMAN: It's a question of admissibility
2 of the testimony that I am bothered about, not whether
3 Mr. Cataldo's testimony needs support.

4 That's a matter for you to determine.

5 I think that Counsel for the General Counsel
6 wants to make a statement.

7 MR. ROSENBERG: I must comment on Mr. Fanton's
8 statement.

9 These are not adversary proceedings.

10 We adhere to the rules of evidence.

11 Secondly, the only thing Mr. Baldwin is going to
12 be able to testify to is what Mr. Cataldo said to him
13 in an interview.

14 Mr. Cataldo's statement referring to Mr. Rossetti's
15 statement could only be used for credibility purposes.

16 They would not be admissible for the truth of
17 the matter contained therein.

18 MR. FANTON: I am not offering him for that.

19 JUDGE FRIEDMAN: He has a right to support his
20 own witness' credibility, if he can do it.

21 MR. ZOLOT: But, this is not the way to corroborate
22 it.

23 What you are saying in effect is that this inter-
24 view which took place two weeks, three weeks ago --

25 JUDGE FRIEDMAN: After the incident?

1 MR. ZOLOT: Yes, I submit that it is not corro-
2 borative evidence.

3 IF I were a participant in that conversation, I
4 could corroborate that conversation, but, a third party
5 to whom I relate this conversation to, a week or two
6 later or two years later cannot be used for corroborative
7 purposes.

8 MR. FANTON: Just a minute.

9 My point is to corroborate with Mr. Salvati's in
10 his description of what took place at this conference,
11 that's the only purpose, to reinforce the credibility
12 of the witnesses.

13 JUDGE FRIEDMAN: I will take this testimony for
14 that purpose only.

15 Now, it gets to a dangerous state here.

16 You see, if I take this testimony which corroborates
17 the testimony of Mr. Cataldo as to what Mr. Cataldo
18 told Mr. Baldwin, then I am in effect saying therefore
19 what Mr. Cataldo said must be correct as against what
20 somebody else said.

21 In other words, you are attempting by this really
22 in a round about fashion to corroborate the fact that
23 Mr. Cataldo was testifying --

24 MR. FANTON: I am going beyond that.

25 MR. ZOLOT: I will concede that Mr. Salvati con-
sulted with Counsel, ~~if that's what~~ the objective of

39 the testimony is.

MR. FANTON: That isn't it.

MR. ROSENBERG: Two points.

One, statements that were given contemporaneous to the Board proceedings, litigation motivated and therefore they lack reliability.

And secondly -- skip the second point.

These are motivations.

They are not statements that have the reliability of being tied in.

MR. FANTON: It is being offered, your Honor, solely for the purpose of showing consistency and showing that the recollection of the witnesses jibe with each other and if your Honor feels it is improper and unhelpful, I won't press it any further.

That's the purpose of the offer.

JUDGE FRIEDMAN: I see.

If I take it, as I said before for the purpose of corroborating what Mr. Cataldo told Mr. Baldwin, and I have no doubt that Mr. Baldwin will corroborate what was told, no question about that, it's still number one, it doesn't support that Mr. Cataldo was telling the full details or the truth if that's the case, I mean, that Mr. Cataldo's statements were credible at the time he told it to Mr. Baldwin.

1 It adds nothing to Mr. Cataldo's testimony ex-
cept that it was taken, testimony taken immediately
3 after.

4 I don't think it is in the same nature of sworn
5 testimony.

6 MR. ROSENBERG: Sworn and adopted on the stand.

7 One other point, nowhere has anybody attacked
8 Mr. Cataldo's statement as being a recent fabrication.

9 Nobody said it was fabricated.

10 We took his old statement from way back then
11 and he adopted it and it was placed into evidence.

12 If we attacked it as being a recent fabrication,
13 then prior consistent statements would be admissible
14 for credibility purposes.

15 JUDGE FRIEDMAN: It doesn't add anything to the
16 case.

17 I am going to rule that -- the only rule that I
18 can allow it under -- no, it couldn't -- it can't even
19 come under that.

20 MR. FANTON: He will have given us a few details
21 that Mr. Cataldo couldn't recall.

22 JUDGE FRIEDMAN: That, I think we could not have
23 allowed.

24 That would be inadmissible.

25 MR. FANTON: I am just noticing that from looking

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1 at the notes.

2 I'm sorry, Mr. Baldwin.

3 (Whereupon, Mr. Baldwin leaves the stand.)

4 JUDGE FRIEDMAN: Is there anything else from the
5 Respondent?

6 MR. FANTON: Nothing further.

7 JUDGE FRIEDMAN: All right.

8 MR. ZOLOT: I have nothing, your Honor.

9 MR. ROSENBERG: General Counsel has nothing.

10 JUDGE FRIEDMAN: We have to either argue or sub-
11 mit briefs.

12 MR. ZOLOT: I will put it on the record right now.

13 MR. FANTON: May I make this statement, that I
14 will want to file a brief.

15 JUDGE FRIEDMAN: Do you want to give an oral
16 argument?

17 MR. ZOLOT: What I have to say in the brief will
18 be no more succinct.

19 JUDGE FRIEDMAN: You certainly have a right to do
20 so.

21 MR. ZOLOT: I'm trying to avoid the necessity of
22 filing a brief.

23 It seems to me that the crucial points when was
24 there misrepresentation and if there was a misrepresentation
25 what was the impact upon the voters.

1 All three cases they said that they did not change
2 their mind as a result of this discussion, so, whether
3 it was a misrepresentation or not is immaterial.

4 The key to the case as I read the record is
5 what impact did it have upon the employees.

6 All three of them said none.

7 I rest.

8 JUDGE FRIEDMAN: You will file a brief, sir?

9 MR. FANTON: I will file a brief, your Honor.

10 My only comment is that when the record is analyzed
11 and reviewed, it will demonstrate that what was said
12 certainly in the mind of any reasonable man judging
13 the situation regardless of what was said by the three
14 witnesses produced here today would recognize that this
15 would have a very serious impact on the people who heard
16 it and talked about it and Mr. Atkins in particular
17 indicated the extent of the discussion, that it was a
18 prime point of discussion.

19 JUDGE FRIEDMAN: All right, gentlemen, I am going
20 to give you a date for the filing of briefs.

21 I know you would all like to bring this thing to
22 a head as quickly as possible, but, I have five cases
23 to decide before I get to this one.

24 Today is the 15th, I believe February 17th is a
25 holiday.

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Briefs are due February 13th in Washington.

MR. ROSENBERG: As you know, we have a remand from the Court in an 8(a)(5) proceeding and there was no objectionable conduct engaged in by the victorious Union.

If your Honor finds that there are material misrepresentations which were sufficient to set aside the election, then, of course, you will set aside the election and dismiss the 8(a)(5) charge.

JUDGE FRIEDMAN: And recommend a new election be held.

MR. ROSENBERG: On the other hand, if you find that there has been a material misrepresentation warranting the setting aside the election, I assume you will reaffirm or either reaffirm the 8(a)(5) or transfer the case back to the Board so that it can re-enter its summary judgment in the 8(a)(5) proceeding.

Will there be an order transferring the case to the Board?

JUDGE FRIEDMAN: No. It won't be necessary. I will simply order it.

I will issue a regulated 8(a)(5) order.

MR. ZOLOT: I suppose, your Honor, it is useless to ask an expansion of remedy for the violation to include compensation, attorney fees?

JUDGE FRIEDMAN: It would be quite useless.

They have been turned down by the Courts the last couple of times that they have tried and I don't think that I would do it.

MR. ZOLOT: We have had whatever agreement it may be made retroactive of the unfair labor practice charge.

JUDGE FRIEDMAN: I will consider that or at least mention it to the extent that the Board will have it.

If I don't have the courage to do it, maybe the Board would.

MR. FANTON: I would say in view --

JUDGE FRIEDMAN: I have never seen it done in this type of proceeding and I would doubt if I would be the initiator.

MR. FANTON: Certainly on a remand from the Circuit Court, I don't see how it is warranted at all.

Had the Board granted our request in the first instance, the matter would have been decided in our view at a more earlier time where memories were fresher and of course we are not responsible for these delays that have undergone.

JUDGE FRIEDMAN: If we are going to do that, Mr. Zolot, at least this is the way it would strike me.

I am not making up my decision now, because I have to review all the testimony.

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If indeed the original request for a hearing on the objections or the objections themselves were deemed fruitless, that might be one thing, but, the very fact the Court of Appeals thought the objections were serious enough to send back for a hearing, I certainly can't make a decision now and I don't think the Board would make a decision that these were frivolous objections and in view of that, I don't have the type of order that Mr. Zolot is requesting can be forthcoming, that's my opinion now.

If there is a reason for anybody changing this particular opinion of mine, at this time, I would be glad to take it.

MR. FANTON: I would say as well I intend to move formally for a dismissal of the petition altogether in view of the circumstances so that they exist today, not just a revamp of the election.

JUDGE FRIEDMAN: You can ask for it within the confines of the remand.

Hearing nothing further, the hearing is closed at 4:00 o'clock.

(Whereupon, at 4:00 o'clock P.M. the record was closed.)

STATEMENT OF FRED SALVATI.

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

FRED SALVATI, Being duly sworn, deposes and says:

I live at 22 Horseshoe Drive, Trumbull, Conn. My phone number is 203-371-0205.

I am the Vice-President of Henderson-Trumbull Supply Corp. I have been with the Company about eight years.

On Thursday, June 15, 1972 as the men were punching out, one of the men, Joe Ballaster, asked if I had heard about the Union telling the boys what the Company had made last year. I said I hadn't and asked if he knew more. He said he didn't as he did not attend the meeting.

On Friday night, June 16, 1972, Jerry Cataldo came in late from a delivery. I was the only one in the store and I asked him how much the Union told him the Co. made and he answered, \$1.3 million. I then asked if the Union man meant profit or sales. Cataldo answered profit.

Then he volunteered further information to the effect that Rossetti told them I was living in a house worth \$75,000, indicating, in my belief, that it was paid for by money I was taking from the Company.

STATEMENT OF FRED SALVATI

Later that evening I called Mr. Henderson, President of Henderson-Trumbull, and told him what I had found out. Mr. Henderson then called his lawyer, Mr. Baldwin.

On the following Monday, June 19, 1972, Jerry Cataldo and I met with Mr. Baldwin in his office. In the office, Cataldo repeated the statements he had made to me on Friday.

Baldwin asked Cataldo what effect this statement had on him and Cataldo answered that he felt he was getting shafted by the Co.

That same Monday I came back to the Company and I spoke to Steve Atkins, one of our drivers. I asked Steve about the remark pertaining to the amount of money the Co. made. Steve told me that he had been told the Co. made \$1.3 million dollars.

I also asked Steve about what had been said about my house. He said that someone asked how could Salvati afford such an expensive house.

At this time I asked Steve if he would be willing to tell this story to the lawyer and he said he would. He also made the statement at this time that the statement pertaining to the amount of money the Company made swayed his vote for the Union.

STATEMENT OF FRED SALVATI.

Immediately after talking to S. Atkins I spoke to Pete GARRICK. I asked the same questions as I had asked Steve and he answered much the same way. He also agreed to give a statement.

I spoke to these two other people on advice of counsel to have them corroborate Cataldo's statement.

Also on Monday, the 19th, Cataldo approached me. He was worried about any trouble he might have in the yard or with the Union because he gave us this information. He mentioned having had some trouble previously with a Union. I told him that I did not think the Union would be bothered because there were so few men involved.

I have read the above statement consisting of this and

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STATEMENT OF FRED SALVATI

three other pages and it is true to the best of my knowledge and belief.

/s/ Fred J. Salvati

Signed and sworn to
before me this 26th day of
June, 1972.

/s/ Clifford P. Chalet

STATEMENT OF GERALD CATALDO.
STATE OF CONNECTICUT
COUNTY OF FAIRFIELD

Gerald Cataldo being duly sworn, deposes and says:

I live at 76 Palisade Avenue, Bridgeport, Conn. My phone number is 203-367-5606.

I am employed as a driver by Henderson-Trumbull Supply Corp. and have been employed here since August 1, 1971.

I attended a meeting in Bridgeport, Conn. on Monday night, June 12, 1972. This meeting was called by Tony Rossetti, business agent for Local 191, I.B.F. It lasted about 15 minutes.

We didn't do much talking but someone, not Rossetti, mentioned Salvati's house. Rossetti told us that it was our money that built Salvati's house and that we were getting screwed by the Company.

Then he said that the Company made \$1.3 million dollars last year. He did not read this figure off of any paper.

When he told us the figure, it surprised me and I think it surprised most of the other men also. I said out loud that we must be getting screwed.

With that the conversation turned away from business and that was it.

STATEMENT OF GERALD CATALDO

Some time around the end of that week, around June 22, 1972, Salvati approached me and told me that he needed three guys to say that the Union sort of forced us to vote for it. This was not the case. I voted for the Union because I wanted it, even before Rossetti made the statement about the money.

I have read the above statement consisting of two pages and it is true to the best of my knowledge and belief.

/s/ Jerry Cataldo

Signed and sworn to
before me this 26th day
of June, 1972.

/s/ Clifford P. Chalet
Examiner

STATEMENT OF STEVE ATKINS.

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

Steve Atkins being duly sworn, deposes and says. I live at 80 Columbine Drive, Trumbull, Conn. My phone number is 203-260-2135.

I am employed by Henderson Trumbull Supply Corp. as a driver. I have been an employee for the past four years.

I attended a meeting at Local 191's hall in Bridgeport, Conn. on Monday night, June 12, 1972. There were eight employees of Henderson-Trumbull and Anthony Rossetti, Local 191's business agent in attendance.

Rossetti explained what would be happening on Wednesday at the election. Then there was a sort of question-answer period when one of the men asked Rossetti how much money we would get with the Unions in. Rossetti told us he did not know at that time. Then he said something about the Company making one million dollars last year. One of the men asked how could they make that much.

Rossetti answered to the effect that we have to know they are making a lot of money. Then someone, I'm not sure it was Rossetti, said "look at Salvati's house, (Salvati is the Vice-President) it's worth about \$75,000."

STATEMENT OF STEVE ATKINS

At a meeting with Henderson and Salvati (Henderson being President of H-T Supply) just before the meeting with Rossetti, we were told the Company netted \$300,000 last year.

On either June 16 or June 19, 1972, Salvati approached me asked if I would give a statement about what had happened at the meeting.

What was said at the meeting did not cause me to change my mind about how I was going to vote in the election.

I have read the above statement consisting of two pages and it is true to the best of my knowledge and belief.

This statement was given to me by Steve Atkins on Monday, June 26, 1972.

/s/ Clifford P. Chalet

SUPPLEMENTARY STATEMENT OF STEVE ATKINS.

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

SUPPLEMENTARY STATEMENT

Steve Atkins, being duly sworn, deposes and says: At the meeting with Rossetti on June 12, 1972, J.C. Anderson, Fred Jay, Peter Garrick, Bob Piccarillo, Ed Pirrozzoli, Jerry Dumas, Jerry Cataldo and myself were present. Joe Baluster was not present.

The meeting lasted from 45 minutes to an hour.

When Rossetti mentioned how much money the company made last year, I believe he said 1.2 or 1.3 million dollars. As to the statement concerning SALVATI'S house, I think it came from J.C. Anderson. Rossetti did not bring it up.

This supplementary statement was given to me by Steve Atkins on Monday July 10, 1972.

/s/ Clifford Chalet

RECEIVED
U. S. ATTORNEY

Nov 6 1 19 PM '75

EAST. DIST. N. Y.

P. J. [Signature]

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